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APPENDIX

Civil Docket 133-28

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

FRANK COSTELLO

For plaintiff:

U. S. ATTORNEY

For defendant:

HAYS, ST. JOHN, ABRAMSON & HEILBRON
EDWARD BENNETT WILLIAMS
120 Broadway, N. Y. 5

Docket Entries

May 1-58—Filed complaint and issued summons.

May 6-58—Filed summons and return. Served deft 5-5-58.

July 3-58—Filed Stip extending time of deft. to answer to 7-10-58. Clerk.

July 8-58—Filed Answer of deft — HStJ A & H.

July 24-58—Filed Note of Issue and Statement Pursuant Cal Rule 5.

Sept. 10-58—Filed affdvt and Notice of Motion for order granting preference, etc. Ret. 8-19-58.

9-8-58—Memo End. Motion granted to extent indicated
—Cause set for head of ready cases sent out for trial on 12-1-58. Clancy, J.

Nov. 7-58—Filed affdvt and Notice of Motion re taking deposition etc. Ret. 11-12-58.

Nov. 18-58—Memo End. on Motion filed 11-7-58: Motion disposed of as agreed upon by counsel. Order to be submitted. Bryan, J.

Nov. 19-58—Filed notice of taking deposition of John McLeod.

Nov. 19-58—Filed notice of taking deposition of Philip Coffey.

Dec. 5-58—Filed affdvt for Writ of Habeas Corpus and issued writ Ret. 12-8-58.

Dec. 11-58—Before Dawson, J. Trial begun.

Dec. 12-58—Trial continued.

Dec. 16-58—Filed Notice of taking deposition of Helen Sausser.

Dec. 18-58—Filed Transcript of record of proceedings of Dec. 11, 12, 15, 1958.

Dec. 15-58—Trial continued. Before Dawson, J. Adj. to 1-5-59.

Jan. 5-59—Before Dawson, J. Trial continued from Dec. 15-1958.

Jan. 6-59—Trial continued.

Jan. 7-59—Trial continued.

Jan. 8-59—Trial continued—Decision Reserved. Summations heard.

Feb. 2-59—Filed copy of affdvt for Writ of Habeas Corpus. Memo End. (12-5-58) Writ executed.

Feb. 10-59—Filed transcript of record of Proceedings of January 5, 6, 7, 8, 1959.

Feb. 20-59—Filed Opinion No. 24,895—Judgment granted revoking and setting aside order of court of 9-10-25 admitting deft to citizenship, and cancelling Certificate of Naturalization issued to Deft on that date. Opinion

constitutes findings of fact and conclusions of law of the Court. Let judgment be entered accordingly. Dawson, J. (see opinion) Judgment entered. Clerk mailed notice of entry 2-20-59.

Mar. 9-59—Filed supplemental judgment vacating order admitting deft to citizenship—cancelling certificate of naturalization issued to deft 9-10-25—that deft is not and never was a naturalized citizen etc. and that deft surrender certificate of naturalization to Immigration & Naturalization Serv. etc. Dawson, J. Judgment entered. Clerk: Mailed notice of entry 3-10-59.

Apr. 17-59—Filed deft's notice of appeal—Mailed copy to US Atty 4-18-59.

A True Copy

JOHN A. MAURIELLO
Deputy Clerk.

(Seal)

1020

Complaint

Civ. 133-28

Plaintiff, UNITED STATES OF AMERICA, by PAUL W. WILLIAMS, United States Attorney for the Southern District of New York, as and for its complaint herein, alleges as follows:

First: Plaintiff, United States of America, is a sovereign body politic.

Second: This action is instituted pursuant to the provisions of Title 8, United States Code, Section 1451(a) to revoke and set aside the order of this Court entered September 10, 1925, admitting the defendant Frank Costello to United States citizenship, and to cancel

certificate of naturalization No. 2136470, issued by this Court to the defendant Frank Costello on September 10, 1925, on the ground that the order and certificate of naturalization were procured by the concealment of material facts and by wilful misrepresentation.

Third: Affidavits showing good cause for the institution of these proceedings are annexed hereto as Exhibits A, B, C, D and E, and are made a part hereof. Also annexed hereto as Exhibit F and made a part hereof is a letter from Malcolm Anderson, Assistant Attorney General in charge of the Criminal Division, Department of Justice, authorizing and directing institution of this action.

1021 Fourth: The last known place of voluntary residence of the defendant Frank Costello in the United States was and continues to be at 115 Central Park West, in the Borough of Manhattan, City and State of New York and within the Southern District of New York.

Fifth: The defendant filed a petition for naturalization in the United States District Court for the Southern District of New York on May 1, 1925 and on September 10, 1925 was admitted to citizenship by order of that Court, receiving certificate No. 2136470 on that date.

Sixth: Upon information and belief prior to the date of his naturalization, the defendant was a citizen of Italy.

Seventh: The order and certificate of naturalization were procured by wilful misrepresentation in that:

(a) In the preliminary form for naturalization filed by the defendant, he falsely stated that his occupation was "real estate", whereas in truth and in fact his occupation was the illicit purchase and sale of alcohol.

(b) He falsely testified under oath before a naturalization examiner that his occupation was "real estate",

whereas in truth and in fact, his occupation was the illicit purchase and sale of alcohol.

(c) He falsely stated under oath in his petition for naturalization that his occupation was "real estate", whereas in truth and in fact his occupation was the illicit purchase and sale of alcohol.

(d) He falsely stated in his preliminary form for naturalization that Harry C. Sausser, a witness that he intended to use, had as his occupation "real estate" and had personal knowledge of his good character, when in truth and in fact, as he then and there well knew, 1022 said Harry C. Sausser was engaged with him in the illicit purchase and sale of alcohol and knew that he, Frank Costello, was likewise engaged in the illicit purchase and sale of alcohol and was therefore not a person of good moral character.

(e) He falsely stated in his preliminary form for naturalization that the only other name by which he had ever been known was Francisco Castiglia, when in truth and in fact, as he then and there well knew, he had also used the names Frank Stello and Frank Saverio.

(f) He falsely stated under oath in his petition for naturalization that he would support and defend the Constitution and laws of the United States of America and that he would bear true faith and allegiance to the same, whereas in truth and in fact, he was at that very time violating the laws of the United States and the State of New York by engaging in the illicit purchase and sale of alcohol and by failing to file appropriate federal and New York state income tax returns and failing to pay appropriate federal and New York state income taxes, and intended to continue to violate the same.

(g) He falsely stated to the naturalization examiner under oath that he had never been arrested for or convicted of any crime, when in truth and in fact, as he then

and there well knew, he had been arrested on May 6, 1908, charged with robbery; on October 20, 1912, charged with robbery; on March 19, 1915, charged with unlawful possession of a firearm; and on May 20, 1919, charged with larceny; and had been convicted on April 5, 1915 of unlawful possession of a firearm and was sentenced on such conviction to one year in the State Penitentiary.

Eighth: The order and certificate of naturalization were procured by the concealment of material facts in that:

1023 (a) At the time of his appearance before the naturalization examiner for the purpose of answering questions under oath, he brought with him as a witness one Harry C. Sausser, whom he presented to the naturalization examiner as a person who had knowledge of his good moral character who was in the real estate business and concealed from the naturalization examiner the fact, which he then and there well knew, that said Harry C. Sausser was in fact engaged in the illicit purchase and sale of alcohol as his agent and that said Harry C. Sausser was well aware of Frank Costello's lack of good moral character.

(b) At the time Harry C. Sausser signed his petition for naturalization stating thereon that he was in the real estate business and that he knew Frank Costello to be a person of good moral character and attached to the principles of the Constitution of the United States of America, Frank Costello concealed the fact, which he then and there well knew, that said Harry C. Sausser was in fact engaged in the illicit purchase and sale of alcohol as his agent and knew him to be a person of bad moral character.

WHEREFORE, plaintiff demands judgment revoking and setting aside the order of this Court entered September 10, 1925, admitting the defendant Frank Costello to United States citizenship, and cancelling certificate of naturalization No. 2136470, issued by said Court to the defendant on

September 10, 1925, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, N. Y., May 1, 1958.

PAUL W. WILLIAMS,
*United States Attorney for the
 Southern District of New York;
 Attorney for Plaintiff.*

By: /s/ MORTON S. ROBSON
 Morton S. Robson,
Assistant United States Attorney.

Office & Post Office Address:
 United States Court House,
 Foley Square,
 New York 7, N. Y.

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EXHIBIT A.

STATE OF NEW YORK }
 SOUTHERN DISTRICT OF NEW YORK } ss.:

MITCHELL S. SOLOMON, being duly sworn, deposes and says:

I am a Supervisory Investigator for the Immigration and Naturalization Service.

In the course of my official duties, I conducted an investigation of the naturalization proceedings of one Frank Costello.

Attached hereto are photostatic copies of various documents obtained by me during the course of this investigation.

1. Certified copy of petition of Frank Costello for naturalization executed May 1, 1925, and order of the United States District Court for the Southern District of New York admitting Frank Costello to citizenship dated September 10, 1925.

2. Preliminary form for petition for naturalization from the files of the Immigration and Naturalization Service which was filed by Frank Costello.

3. Form 2328—admitted slip—obtained from the file of Frank Costello in the possession of the Immigration and Naturalization Service.

4. Certified copy of a complaint filed against Frank Costello on May 6, 1908, in the Magistrates' Court of the City of New York, Sixth District, First Division, charging said Frank Costello with robbery.

5. Certified copy of complaint filed against Frank Costello on October 20, 1912, in the Magistrates' Court of the City of New York, Fifth District, First Division, charging said Frank Costello with robbery.

6. Certified copy of an indictment filed against 1025 Frank Saverio on March 19, 1915, charging said

Frank Saverio with unlawful possession of a firearm in violation of Section 1897 of the Penal Law of the State of New York.

7. Certified copy of the minutes of sentence of afore-said Frank Saverio on April 15, 1915, indicating that he also used the names Stello and Frank Costello.

8. Certified copy of complaint filed against Frank Costello on May 20, 1919, charging him with grand larceny.

MITCHELL S. SOLOMON (sgd)

Sworn to before me, this 22nd day of April, 1958.

DANIEL TANENBAUM

Notary Public, State of New York

No. 24-3930200 Kings County

Commission Expires March 30, 1959

(Attachments 1-3 printed at pp. 200-205 *infra*; attachments 4-8 omitted in printing.)

1055

EXHIBIT B.

STATE OF NEW YORK
 EASTERN DISTRICT OF NEW YORK } ss.:

LOUIS M. DILLON, being duly sworn, deposes and says:

From January or February, 1925 until 1955, I was employed by the United States of America as an examiner for the Naturalization Service.

Between April 1, 1925 and December 31, 1925, I was stationed at the New York office of the Naturalization Service, which was then located at 154 Nassau Street, New York, N. Y.

During that period, I was employed as a naturalization examiner and my duties included a processing of applications for naturalization. In the course of such processing I interviewed applicants for naturalization and their witnesses.

A standard procedure was followed in all cases of applicants for naturalization, and I am familiar with this procedure.

Every applicant who had filed a declaration of intention and who thereafter desired to be naturalized was required to file with the Naturalization Service an application form entitled "Preliminary form for Petition for Naturalization" (Form 2214).

Subsequent to the filing of this form, each applicant was required to appear in person, together with his two witnesses, before a naturalization examiner.

The applicant and his two witnesses were then sworn to tell the truth by the examiner. Thereupon they were questioned concerning various pertinent subjects. Among other things they were asked to give their occupation and also they were asked whether they had ever been arrested for any crime or convicted of any crime.

1056

The answers made to these questions were noted upon Form 2328, which was a card known as an admitted slip.

If an applicant advised in response to the question that he had been arrested for or convicted of a crime, an appropriate notation indicating that answer was made on the back of this slip.

I have examined the admitted slip prepared in the matter of Frank Costello, a copy of which is attached to the affidavit of Mr. Mitchell Solomon. This examination reveals that nowhere on this slip does there appear any notation indicating that Frank Costello advised the naturalization examiner that he had ever been arrested or convicted of a crime.

LOUIS M. DILLON (sgd)

Sworn to before me, this 22nd day of April, 1958.

PETER A. PASSALACQUA

Notary Public, State of New York

No: 24-3028800

Qualified in Kings County

Cert. filed with Kings & Queens Co. Reg.

Commission Expires March 30, 1959

1057

EXHIBIT C.

STATE OF NEW YORK }
SOUTHERN DISTRICT OF NEW YORK } ss.:

JAMES N. SULLIVAN, being duly sworn, deposes and says:

I was formerly employed as a Special Agent of the Internal Revenue Service.

On July 20, 1938, I questioned Frank Costello in New York City. On that occasion Frank Costello admitted that he had been in the liquor business during prohibition "from 1923 or 1924 until about a year or two before Repeal".

JAMES N. SULLIVAN (sgd)

Sworn to before me, this 18th day of April, 1958.

JULIUS ROLNITZKY

Notary Public, State of New York
No. 41-3334300 Queens County
Commission Expires March 30, 1959

1058

EXHIBIT D.

STATE OF NEW YORK }
SOUTHERN DISTRICT OF NEW YORK } ss.:

JOSEPH KAITZ, being duly sworn, deposes and says:

During the year 1947 I was a Deputy Commissioner of the New York State Liquor Authority.

In connection with an official investigation being conducted by the said Liquor Authority, I questioned Frank Costello under oath on February 15, 1947, in New York, N. Y.

At the time of that interview Frank Costello was accompanied by his counsel, George Wolfe, Esq.

During the course of the interrogation on February 15, 1947, Mr. Wolfe asked his client if he were engaged in bootlegging during prohibition, and Costello admitted that he had been so engaged during the years 1923 to 1926. Costello admitted that at that time he had been importing whiskey into the United States and selling it to individuals, and that he maintained his headquarters for this business at 405 Lexington Avenue, New York City. Costello also acknowledged that during prohibition he had a representative named "Harry Saucer" who acted as his agent in purchasing liquor in Canada.

JOSEPH KAITZ (sgd)

Sworn to before me, this
17th day of April, 1958.

BERTRAM D. SARAFAN
Notary Public, State of New York
No. 30-8765020
Qualified in Nassau County
Commission Expires March 30, 1960

1059

EXHIBIT E.

STATE OF NEW YORK }
SOUTHERN DISTRICT OF NEW YORK } ss.:

FRANK S. HOGAN, being duly sworn, deposes and says:

I am the District Attorney for the County of New York, State of New York, and have held that office since 1942.

In 1943, in connection with a proceeding pending before the Supreme Court of the State of New York, Appellate Division, First Department, entitled "In the Matter of Thomas A. Aurelio", I conducted an examination of Frank Costello.

During the course of this examination, I asked Frank Costello whether he had ever paid any income tax to the

State of New York or to the United States of America for the years 1919 to 1932.

Frank Costello stated that he had not paid any taxes to either the State of New York or the United States of America during those years, but that subsequently he had made a settlement with both the State of New York and the United States of America of his income tax liability for those years.

I also asked Frank Costello whether he had been convicted of a crime in 1915 and he admitted that he had been convicted of violation of the Sullivan Law and had been sentenced to jail, where he remained for ten months.

FRANK S. HOGAN (sgd)

Sworn to before me, this
21 day of April, 1958.

ROBERT F. WARD

Notary Public, State of New York
No. 41-4155500

Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1959

1060

EXHIBIT F.

Assistant Attorney General
Criminal Division

DEPARTMENT OF JUSTICE
WASHINGTON

April 28, 1958

Paul W. Williams, Esquire
United States Attorney
New York 7, New York

Re: *United States v. Frank Costello*

Dear Mr. Williams:

I have read the affidavits of Mitchell S. Solomon, executed April 22, 1958; Louis M. Dillon, executed April 22, 1958; James N. Sullivan, executed April 18, 1958; Joseph Kaitz, executed April 17, 1958; and Frank S. Hogan, executed April 2, 1958. I am satisfied therefrom that there is good cause to institute proceedings for the purpose of revoking and setting aside the order admitting Frank Costello to citizenship and canceling his certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of material facts and by willful misrepresentations.

You are accordingly authorized and directed by the Attorney General to file an appropriate complaint against Frank Costello pursuant to the provisions of Section 340(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1451(a).

Sincerely

MALCOLM ANDERSON (sgd)

Malcolm Anderson

Assistant Attorney General

1063.

Answer**FIRST DEFENSE**

The complaint fails to state a cause of action against defendant upon which relief can be granted.

SECOND DEFENSE

Defendant admits the allegations of paragraphs 4, 5; and 6 of the complaint and denies the allegations of paragraphs 7 and 8. The allegations of paragraphs 1, 2, and 3 of the complaint constitute legal conclusions which defendant is not required to answer.

THIRD DEFENSE

Any alleged claim set forth in the complaint is barred under principles of res judicata.

FOURTH DEFENSE

Any alleged claim set forth in the complaint is barred by laches.

FIFTH DEFENSE

Section 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U.S.C. § 1451(a), on its face and as applied to this defendant is invalid in that it constitutes ex post facto legislation and deprives him of rights guaranteed by Article III and the due process clause of the Fifth Amendment to the United States Constitution.

SIXTH DEFENSE

The complaint and the affidavits annexed thereto are based upon evidence secured in violation of § 605 of the Communications Act of 1934, 48 Stat. 1103, 47 U.S.C. § 605.

/s/ EDWARD BENNETT WILLIAMS
Edward Bennett Williams
Office and Post Office Address
1000 Hill Building
Washington 6, D. C.

HAYS, ST. JOHN, ABRAMSON &
HEILBRON

By: /s/ MORRIS SHILENSKY
Morris Shilensky, a member of
the firm
Office and Post Office Address
120 Broadway
New York 5, New York

Attorneys for Defendant

Appearances:

ARTHUR H. CHRISTY, Esq., United States Attorney for the
Southern District of New York

MORTON S. ROBSON, Esq., Assistant United States At-
torney

JOHN A. GUZZETTA, Esq., Assistant United States At-
torney

Of Counsel

HAYS, ST. JOHN, ABRAMSON & HEILBRON, ESQs., of New
York, N. Y.

Attorneys for Defendant

EDWARD BENNETT WILLIAMS, Esq., of Washington, D. C.

Of Counsel

DAWSON, D. J.:

This is an action brought by the United States of Amer-
ica pursuant to the provisions of Title 8, United States
Code, § 1451(a)¹ to revoke and set aside an order of
1087 this court entered September 10, 1925 admitting the
defendant Frank Costello to United States citizen-
ship, and to cancel a certificate of naturalization issued to
this defendant, on the ground that said order and certifi-
cate of naturalization were procured by the concealment of
material facts and by willful misrepresentation.

The past history of this action bears mention. On Octo-
ber 22, 1952 the Government instituted denaturalization
proceedings against this defendant under § 338(a) of the
Nationality Act of 1940, 54 Stat. 1158, § 738 of old Title 8,

¹ 66 Stat. 260, 8 U.S.C. § 1451(a) reads in pertinent part:

"It shall be the duty of the United States attorneys for the respective
districts, upon affidavit showing good cause therefor, to institute proceedings
... for the purpose of revoking and setting aside the order admitting such
person to citizenship and cancelling the certificate of naturalization on the
ground that such order and certificate of naturalization were procured by
concealment of a material fact or by willful misrepresentation. . . ."

U.S.C.A. That action came on for trial before Judge Palmieri of this court in 1956.² Defendant's counsel moved to dismiss the action on the ground that both the affidavit of good cause and the Government's evidence were tainted by wiretapping. This contention was sustained by the court and the action was dismissed without prejudice to renew and upon certain conditions. *United States v. Costello*, 145 F. Supp. 892 (S.D.N.Y. 1956):

This judgment was subsequently reversed by the United States Court of Appeals for this circuit on the ground that even if the Government's affidavit of good cause was invalid as the fruit of illegal interceptions, the Government should have been permitted to file a new affidavit rather than have the case dismissed. *United States v. Costello*, 247 F.2d 384 (2d Cir. 1957). The Supreme Court 1088 granted certiorari and reversed the Court of Appeals on the ground that the affidavit of good cause should have been filed contemporaneously with the complaint; it ordered that the complaint be dismissed. *Costello v. United States*, 356 U.S. 256 (1958). The Government, on May 1, 1958, instituted this action. It is brought under the provisions of § 340(a) of the Immigration and Nationality Act of 1952,² and an affidavit of good cause was filed contemporaneously with the complaint.

The basic facts underlying this action are not in dispute. Frank Costello was, prior to September 10, 1925, a citizen of Italy. On May 1, 1925 he filed a petition for naturalization in the United States District Court for the Southern District of New York. On September 10, 1925 he was admitted to citizenship and Certificate of Naturalization No. 2136470 was issued to him on that date. The Government contends that in more recent years facts have been discovered which indicate that Costello obtained his citizenship

² The Nationality Act of 1940 was superseded on December 24, 1952 by the Immigration and Nationality Act of 1952, commonly referred to as the McCarran Act, June 27, 1952, c. 477, Title III, Chap. 2, § 340, 66 Stat. 260, 8 U.S.C.A. § 1451.

by the concealment of material facts and by willful misrepresentation. Thus, this action was instituted.

The factual issue to be determined by this Court can be simply stated. It is whether or not the defendant 1089 did in fact obtain his citizenship by the concealment of material facts or by willful misrepresentation. If this question is answered in the affirmative, this Court must then examine the several important further legal questions propounded by the defense.

At the conclusion of the Government's case the defendant's attorney indicated that he would not present any witnesses in this action. The defendant moved to dismiss the complaint, resting upon the Government's presentation of evidence and the legal issues which he felt militated in his favor.

Before turning to the findings of fact and conclusions of law, a short review of the law of denaturalization is in order. Naturalization is one of the powers expressly granted by the states to the Federal Government. The Constitution, Article I, Section 8, Clause 4, provides that "The Congress shall have power . . . to establish an uniform Rule of Naturalization." Congress has from time to time exercised that power, established the rule and declared the manner of and the conditions under which an alien may be naturalized to become a citizen of the United States. Pursuant to this authority the first uniform rule of naturalization established by Congress was the Act of March 26, 1790. This basic act has been changed from time to time but it was not until the Naturalization Act of June 29, 1906 that the Act granted for the first 1090 time the authority to denaturalize. Section 15 of the 1906 Act directed United States district attorneys, upon affidavit showing good cause, to institute proceedings for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on

the ground that such certificate of citizenship was illegally procured.

It was early settled by the Supreme Court that it was constitutional to sue to revoke a judgment of naturalization for fraud or illegality, *Johannessen v. United States*, 225 U.S. 227 (1912), and it was also permissible for the Government both to protest the naturalization proceeding and, upon losing, bring suit to revoke a judgment. *United States v. Ginsberg*, 243 U.S. 472 (1917).

The 1906 Act remained basically unchanged with regard to denaturalization until the passage of the Nationality Act of October 14, 1940. This Act codified the Nationality and Naturalization laws of the United States, repealing generally all previous laws of this nature. The Act went into effect January 13, 1941, and § 15 of the 1906 Act was re-renewed as § 338(a)(b)(c)(d)(f) and (g) of the 1940 Nationality Act.

The next important change was the enactment of the Immigration and Nationality Act of 1952, which superseded the prior Act of 1940. The Act of 1940 had provided that the order admitting a person to citizenship might be revoked and set aside and the certificate of naturalization cancelled "*on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.*" Section 340(a) of the 1952 Act changed the grounds to read: "*on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation.*"

Thus, the basic difference between the denaturalization provisions of the new Act of 1952 and those of the prior Act of 1940 is that the prior Act provides as the ground for the bringing of a denaturalization action "fraud" or "illegal procurement." The new Act eliminates the second ground and provides for denaturalization only on the

ground of "concealment of a material fact" or "willful misrepresentation."—It has never been fully resolved as to whether or not the elimination of the ground of illegal procurement and the inclusion of the ground of concealment of a material fact makes the 1952 Act more stringent or less stringent. If the Government proceeds on the allegation of "fraud" it must introduce evidence that is "clear, unequivocal and convincing" and which does not leave "the issue in doubt" that the defendant has been guilty of fraud. *Maisenberg v. United States*, 356 U.S. 670 (1958); *Schneiderman v. United States*, 320 U.S. 118, 158 (1943); *Klapprott v. United States*, 335 U.S. 1092, 601, 612 (1949); *Baumgartner v. United States*, 322 U.S. 665 (1944); *United States v. Anastasio*, 226 F. 2d 912 (3d Cir. 1955).

This burden of the Government to establish clearly and convincingly its evidence is rightly based upon the concept that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. *Schneiderman v. United States*, 320 U.S. 118, 122 (1943); *United States v. Meli*, 158 F. Supp. 217 (E.D. Mich. 1957). We are ever cognizant that denaturalization, like deportation, may result in the loss of all that makes life worth living. *Knauer v. United States*, 328 U.S. 654, 659 (1946). These truths led the courts to lay down the rule that "the facts and the law should be construed as far as is reasonably possible in favor of the citizen." *Schneiderman v. United States*, 320 U.S. 118 (1943); *United States v. Anastasio*, 226 F. 2d 912 (3d Cir. 1955); *United States v. Meli*, 158 F. Supp. 217 (E.D. Mich. 1957). There can be no dispute that our jurisprudence requires a solidity of proof which leaves no troubling doubt when a court decides a question of such gravity as is implied in an attempt to reduce a person from the status of citizen to that of alien. *Baumgartner v. United States*, 322 U.S. 665, 670 (1944); *United States v. Anastasio*, 226 F. 2d 912 (3d Cir. 1955).

Thus, viewing the development of the law and the heavy burden and great responsibility imposed upon the Government in enforcing the denaturalization aspect of our 1093 laws, this court has given exceedingly careful consideration and weight to every allegation and defense. The contentions of the Government, plus the burden of evidence and the findings of fact are discussed seriatim below.

The Government contends that the naturalization order and certificate were procured by willful misrepresentation or concealment of material facts in seven (7) respects which are itemized in the complaint. The Court finds that two of the allegations have been established as constituting willful misrepresentation and fraud.

1. That the defendant stated that his occupation was "real estate" whereas his true occupation was bootlegging.

2. That the defendant swore in his oath of allegiance to the United States, on September 10, 1925, that "I will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same;" whereas at the time the defendant was actually engaged in a course of activity which flouted the Constitution of the United States and was designed to violate the laws of the United States.

On the same day that Costello took this oath of allegiance, Judge Thacher, a judge of this court, in consideration of the petition executed by Costello, and, having found that defendant had taken the oath required 1094 by law, admitted the defendant to United States citizenship. Can there be any doubt that, if Judge Thacher had known at that time that the occupation of the defendant, at that time, was not "real estate" but "bootlegging," and that far from defending the laws of the United States the defendant was engaged in a series of extensive activities designed to flout those laws, he would

have refused to admit Costello to citizenship? Lest there be any doubt on the subject, we must keep in mind that Judge Thatcher himself decided, the following year, that one who deliberately violated the Eighteenth Amendment to the Constitution "cannot be said to be attached to the principles declared by that Amendment," and denaturalized an alien who during the preceding five years had been convicted of violation of the prohibition laws. *United States v. Mirsky*, 17 F. 2d 275 (D.C. N.Y. 1926).

The question as to whether the answers given by the defendant and the oath taken by him were false might be more difficult to determine if it were not that defendant himself has admitted the facts in sworn testimony given by him in various legal interrogations in more recent times.

Thus, in a statement given to Special Agent James N. Sullivan of the Intelligence Unit on July 24, 1938, the defendant Costello was asked the following questions and gave the following answers:

1095 "Q. Did you have anything to do with the liquor business during the Prohibition era—that is, say, from 1920 to 1933?

A. Yes.

Q. During what period of time?

A. Oh, until about—I will say from 1923 or 1924 until a year or two before repeal."

Costello was questioned by District Attorney Hogan before a New York County Grand Jury in 1943 in connection with an investigation into judicial nominations in New York County. He admitted that he had "got large sums of money" from bringing in whisky during prohibition. He was asked the following questions and gave the following answers:

"Q. That is true, you were in the bootlegging business, weren't you?

A. Yes.

Q. And you did smuggle whisky into the country?

A. Yes."

He admitted that he had reported to the State Tax authorities that for the years 1919 to 1932 his income totalled \$305,000, and that most of it was made in the bootlegging business.

He was then asked about his interest in real estate, and gave the following answers:

"Q. Did you have any other occupation in those years?

A. Well, I was doing a little real estate at that time.

1096 Q. Did you ever make any money in real estate?

A. Well, made some moneys, yes.

Q. Not very much was it? Do you recall any particular real estate transaction in which you made any money?

A. Well, I had bought a building on West End Avenue and 92nd Street.

Q. Yes.

A. And I believe I made a little money there.

Q. How much would you say?

A. Well, I would say maybe \$25,000.

Q. On the sale of that building?

A. Yes.

Q. Did you take it in your name or in the name of a corporation?

A. Well, I think it was a corporation at the time.

Q. Do you remember the name of it?

A. I think it was Koslo.

Q. You contend on the sale of that property you profited to the extent of \$25,000?

A. I think so, about twenty or twenty-five thousand dollars. I just don't remember so far back.

Q. How much did you pay for the property?

A. I think we paid about \$125,000, I believe.

"Q. Who was associated with you in the purchase of it?

1097 A. I can't think of his name right now.

Q. How much of the \$125,000 was yours?

A. I had 50 per cent of it.

Q. So that would be \$62,500?

A. Yes. I think we put up about thirty and then we sold it before we even closed.

Q. Whatever you put up was proceeds of the liquor business, isn't that right?

A. It might have been gambling or liquor.

Q. Gambling and liquor?

A. I can't distinguish money from the liquor."

Furthermore, Costello gave testimony before a Referee appointed by the Appellate Division of the New York Supreme Court in a matter relating to the election of a Supreme Court justice in New York, during which he was asked the following questions and gave the following answers:

"Q. You were in the bootlegging business, weren't you?

A. I was.

Q. You smuggled whiskey into the country?

A. Yes.

Q. And your income was pretty heavy in those years, wasn't it?

A. Well, it was profitable."

1098 The Government also presented the testimony of certain individuals who had been associated with the bootlegging activities of Costello during 1925 and prior thereto. One witness, Emanuel Kessler, testified as to how, after the passage of the Eighteenth Amendment, he went into the bootlegging business. He acquired a half dozen boats, including an ocean-going vessel, which transported whiskey from Europe to a location off the end of Long Is-

land where the whiskey was landed at night by means of the smaller boats. He entered into an arrangement with Costello and his brother to transport the illicit, smuggled merchandise from the end of Long Island to Astoria in New York City and there store it in premises owned and occupied by the Costellos. Kessler advanced the money to Costello to buy the trucks to transport this smuggled liquor. On an average, 6,000 cases of whisky were so transported every week, which Kessler thereafter sold at about \$50 a case. He testified that he was doing a business amounting to fifteen million dollars a year. Thereafter Kessler was convicted of violating the prohibition laws and served a two year prison term. In 1928 he was indicted for income tax evasion.

The Government had other witnesses who testified as of their personal knowledge to Costello's participation in bootlegging activities during this period. If the Government rested on the testimony of the individual witnesses it might be necessary to appraise their evidence more carefully, but in view of the fact that the defendant has frankly admitted, on a number of occasions, that in the period around 1925 and prior thereto he was engaged in bootlegging, the testimony of the individual witnesses is, if anything, merely cumulative.

What then is the evidence as to Costello's participation in the "real estate" business during this period? A check of the real estate records from 1921 to 1925 in New York, Bronx, Kings and Queens Counties shows that there was only one real estate transfer in which he participated in his individual name. He was, however, a principal in a concern known as Koslo Realty Corporation, which was formed on December 1, 1924 and which, on the same date, purchased a parcel of real estate on West End Avenue in New York City and sold it the following June 22nd. Thereafter, and after Costello had been naturalized, Koslo Realty Corporation engaged in three other real estate transactions. Thus we have the situation, so far as

the records indicate, that prior to the time that Costello had sworn that his occupation was "real estate" he personally had engaged in only one real estate transfer in his own name; and the corporation in which he was a principal engaged in ~~only~~ one transaction and that to the extent of purchasing one parcel of real estate. During the same period, as the evidence shows and

1100 as Costello has admitted, he was actively engaged in

bootlegging on a large scale and with very profitable results. If a man in that situation had been honest when asked what his occupation was, would he have answered "real estate?" If he had told the truth he probably would not have been naturalized, but this is no excuse for him using fraud and deceit to secure his naturalization. The term "occupation" would commonly be understood to refer to the income producing activity to which a person devotes the major portion of his time and from which he derives the major portion of his income. Defense counsel seems to urge that when the Government asked for the "occupation" of the applicant for citizenship it was asking him to state his "legal occupation." This is a far-fetched hypothesis. Obviously if he were engaged in an illegal occupation the Government would like to know that to determine whether he properly should be admitted to citizenship. Costello, confronted with the question and the fact that his occupation was an illegal one, had one of two choices in giving his answer. If he had told the truth he would have said that his occupation was bootlegging; his application for citizenship would then have been denied. When he answered that his occupation was real estate he was giving a false and misleading answer and was therefore engaging in a willful misrepresentation in order to secure his naturalization certificate.

1101 The Court Finds:

1. That commencing several years prior to May 1, 1925 and during the period from May 1, 1925 to September 10,

1925, and for several years thereafter, Costello was actively and extensively engaged in the occupation of smuggling, trucking, storing, purchasing and dealing in alcoholic beverages in violation of the law.

2. The real occupation of Costello at the time that he applied for naturalization and was admitted to naturalization was not "real estate" but was bootlegging.

3. That when Costello answered the question on the application for citizenship by stating that his occupation was "real estate" he was making a fraudulent statement and a willful misrepresentation in order to secure naturalization.

4. That when defendant in his petition for naturalization and in his oath of naturalization swore that he was attached to and would support the Constitution and laws of the United States, he was engaged in extensive activities in violation of the laws of the United States and contrary to the Constitution of the United States, and that the answers which he gave on his petition for naturalization, and his statement in his oath of naturalization, were false, fraudulent and misleading.

The Court concludes that Costello secured his naturalization by concealment of material facts and by 1102 willful misrepresentation. An application to become a United States citizen is a serious matter and is entitled to be treated with more respect than an application to join the corner pinochle club. An oath of allegiance to the United States is an oath to support the Constitution and laws of the United States, and is, and should be, a solemn obligation. It would be a sad day for the Republic if such an oath could be taken with fingers crossed and tongue-in-cheek, as apparently was done by Costello. The willful misrepresentations and active concealment in which Costello engaged were of a nature which would warrant an order directing his denaturalization.

The Government has urged various other grounds for denaturalization, including other alleged misrepresentations and fraudulent concealment. The Court is not convinced that they have been established by that requisite degree of proof needed in an action of this nature, but in view of the conclusion of the Court, hereinabove stated, there would seem to be no necessity to analyze them with respect thereto in any detail.

At the time of Costello's naturalization the fourth subsection in Section 4 of the 1906 Act provided:

"It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he resided continuously within the United States five years at least; and within the State or Territory where such court is at the time held one year at least, and that during that time has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same"

The courts have held that violations of the prohibition liquor laws, whether national or state, should be taken into consideration in determining questions respecting the good moral character of applicants for citizenship and their attachment to the principles of the Constitution of the United States. *United States v. De Francis*, 60 App. D.C. 207, 50 F. 2d 497 (1931); *Ex Parte Elson*, 299 F. 352 (D.C. W.D. Texas 1924); *In Re Bonner*, 279 F. 789 (D.C. D.Mont. 1922).

The oath an applicant for citizenship takes when admitted is not only one of renunciation of allegiance and fidelity to the sovereignty of his former citizenship, but the applicant also pledges himself to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic and to bear truth [sic] faith and allegiance to the same.

This court, in *United States v. Mirsky*, 17 F. 2d 275 (S.D. N.Y. 1926), had before it an alien who during the period of five years before he had been admitted to citizenship had been convicted of violating the Eighteenth Amendment. This court granted the decree of cancellation of the certificate of naturalization holding,

1104 "The statute requires, as a prerequisite to naturalization, that it shall be made to appear that during the probationary period of five years immediately preceding the application the alien 'has behaved as a man of good moral character, attached to the principles of the Constitution of the United States' . . . One who deliberately violates the Eighteenth Amendment to the Constitution cannot be said to be attached to the principle declared by that amendment. *In Re Nagy* (D.C.) 3 F.2d 77; *In Re Raio* (D.C.) 3 F.2d 78; *In Re Phillips* (D.C.) 3 F.2d 79; *Ex Parte Elson* (D.C.) 299 F. 352; *In Re Bonner* (D.C.) 279 F. 789

"Neither the fact that in this and in other communities there are many citizens who are not attached in thought or deed to the principle embodied in the Constitution by the Eighteenth Amendment, nor the fact that opposition to that principle with a view to removing it from the Constitution is quite generally thought to be the part of good citizenship, can relieve this court of its duty to apply the law as it is now written.

"Motion for judgment is granted. . . ."

The Eighth Circuit had before it in *Turlej v. United States*, 31 F. 2d 696 (8th Cir. 1929) the review of a lower court order cancelling a certificate of naturalization for fraud on the ground that before the certificate was granted the applicant had violated the liquor laws. The Eighth Circuit in upholding the cancellation discussed the fact that the violation of the Eighteenth Amendment clearly dem-

onstrated that the applicant could not be a man of good moral character attached to the principles of the Constitution. The court said:

1105 " . . . It is an act of Congress to administer the new principle of the federal Constitution, prohibition. All this is new and known of all men. Hence violation of it is consciously and deliberately in subversion of the principles of the Constitution, and to which it must be proven the applicant is attached, before admitting him to citizenship . . . It is not enough to be attached to some of the principles of the Constitution. There must be proof of attachment to all of them, including that of prohibition. Violating this law breeds disorder and unhappiness, and in circumstances here indicates the offender is not 'well disposed to the good order and happiness' of nation and people."

In *United States v. De Francis*, 50 F. 2d 497 (D.C. Cir. 1931) the Court of Appeals reversed the lower court's dismissal of a petition for cancellation and indicated that one who violated the National Prohibition Act could not be attached to the principles of the Constitution. The court stated that in order for an alien to avail himself of the privilege of citizenship he must comply with the laws requiring good moral character.

The court indicated that had the naturalization court known of the violations of the prohibition laws the applicant would not have been admitted to citizenship.

The Court stated:

"Any person who violates the provisions of the Prohibition Act violates the principles of the Constitution of the United States, and cannot be held to be attached to the principles of the Constitution of the United States. Nor can it be said that such a person possesses good moral character. Evidence showing the lack of

good moral character is ground for cancellation of
 1106 a certificate. *United States v. Mirsky* (D.C.) 17 F.
 (2d) 275; *Turlej v. United States* (C.C.A.) 31 F.
 (2d) 696, 699; *United States v. Leles* (D.C.) 236 F.
 784; *United States v. Raverat* (D.C.) 222 F. 1018;
United States v. Wexler (D.C.) 8 F.(2d) 880; *United*
States v. Unger (D.C.) 26 F.(2d) 114."

In *United States v. Villaneuva*, 17 F. Supp. 485 (D.C.
 Nev. 1936) the plaintiff's complaint asked that the decree
 of a certificate of naturalization issued to the defendant
 be set aside and cancelled in that the naturalization was
 fraudulently procured since when his petition was filed
 and granted he was not attached to the principles of the
 Constitution and did not intend to support the laws of
 the United States. The Government alleged that both
 before and after the naturalization the defendant had been
 involved in the violation of the National Prohibition Act.
 The court granted an order setting aside the certificate of
 naturalization, stating,

"Courts have quite universally held that violations of
 prohibition liquor laws, whether national or state,
 should be taken into consideration in determining ques-
 tions respecting the good moral character of applicants
 for citizenship and their attachment to the principles
 of the Constitution of the United States. Title 8
 U.S.C.A. § 382; *United States v. De Francis*, 60 App.
 D.C. 207, 50 F.(2d) 497; *United States v. Mirsky* (D.C.)
 17 F.(2d) 275, 276; *Ex parte Elson* (D.C.) 299 F. 352;
In re Raio (D.C.) 3 F.(2d) 78; *In re Bonner* (D.C.)
 279 F. 789; *In re Trum* (D.C.) 199 F. 361; *United States*
v. Leles (D.C.) 236 F. 784; *United States v. Gerstein*,
 284 Ill. 174, 119 N.E. 922, 1 A.L.R. 318."

1107 With reference to the fact that the litigation oc-
 curred after the prohibition amendment had been
 repealed, the court brushed aside the contention that it
 could not act because of the repeal, stating,

"... The fact that the Eighteenth Amendment has been eliminated, the National Prohibition Act repealed, and thus the particular offenses of which the defendant was adjudged guilty are no longer offenses against the Constitution and laws of the United States, does not present a substantial reason why the case of defendant in this proceeding should now be regarded in the light of existing laws rather than the law as existing at the time of his admission, and for a time both prior and subsequent thereto.

"It is therefore the conclusion of the court that defendant's certificate of naturalization should be set aside. . . ."

The findings of fact indicate that the defendant was engaged in violating the Eighteenth Amendment and laws passed pursuant thereto within five years of his naturalization and at the time of his naturalization. The Court concludes that Costello's willful misrepresentation and concealment of material facts, as noted above, and his false oath of allegiance, constituted a fraud upon this court and merit the cancellation of the naturalization decree.

1108 It is now necessary to consider other points raised by defendant's able and astute counsel. Defendant contends that the repeal of the Eighteenth Amendment and of the National Prohibition Laws constitute a bar to a consideration of violations of those provisions when they were in effect, urging that since the Twenty-first Amendment took effect on December 5, 1933 it is settled that no action, civil or criminal, can be maintained which has for its basis violation of the National Prohibition Laws. It should perhaps be pointed out that the basis of the present decision is not that Costello violated the National Prohibition Laws; the basis of the decision is the false representation made by Costello as to his attachment to the principles of the United States Constitution and the laws of the United States.

The Eighteenth Amendment and the National Prohibition Act were in effect in 1925 and the years immediately prior thereto. It was Costello's flagrant and contemptuous disregard of the laws and the provisions of the Constitution which cast doubt on Costello's veracity when he swore his allegiance to the Constitution and pledged himself to uphold the laws of the United States. He must have been referring to the Constitution and to the laws as they were at the time he took his oath. His conduct showed that in making the declaration in the required oath he was making a fraudulent statement; and the later repeal of the prohibition laws cannot erase his fraudulent conduct as it existed at the time he was naturalized. See *United States v. Villaneuva*, supra.

1109 Defendant's counsel further contends that the dismissal of the prior denaturalization proceeding is a bar to this action. That action was dismissed by the Supreme Court on the ground that "an affidavit of good cause is a prerequisite to the initiation of denaturalization proceedings. The affidavit must be filed with the complaint when the proceedings are initiated." 356 U.S. at p. 257. Defendant's counsel urges that under Rule 41(b) of the Rules of Civil Procedure this dismissal operates as a final adjudication and constitutes a bar to further proceedings to denaturalize the defendant. The Court cannot agree with this contention. The rule provides that a dismissal, "other than dismissal for lack of jurisdiction or improper venue" operates as an adjudication on the merits. The most that can be drawn from the decision is that the Supreme Court, in directing the dismissal of the first proceeding, was stating that unless an affidavit of good cause is filed with the complaint the United States Attorney has no jurisdiction to proceed with the denaturalization proceedings. It was dismissing the action for failure to comply with what it deemed to be a jurisdictional requirement. It was not determining the action on the merits, nor did it purport to dismiss the ac-

tion on the merits. The dismissal decree did not operate as *res judicata* so far as the present action is concerned, where the proper affidavit was timely filed and where different grounds of relief were urged by the plaintiff.

1110 Defendant's attorney has also raised the issue of *res judicata*, predicated this defense on the premise that the order of naturalization of September 10, 1925 constituted a valid judgment between the parties determining the issues presented by this action.

It is well established that the doctrine of *res judicata* cannot be asserted against the Government so as to bar or preclude it from instituting and maintaining a statutory proceeding to set aside and cancel a certificate of citizenship on the ground of fraud. Every certificate of citizenship must be treated as granted on condition that the Government may challenge it in a separate proceeding as required by statute and demand its cancellation, unless it was issued in accordance with statutory requirements. *Knauer v. United States*, 328 U.S. 654 (1946); *Maney v. United States*, 278 U.S. 17 (1928); *United States v. Ascher*, 147 F.2d 544 (2d Cir. 1945); *United States v. Gokhale*, 26 F.2d 360 (2d Cir. 1928); *United States v. Javier*, 22 F.2d 879 (D.C. Cir. 1927); *United States v. Ali*, 20 F.2d 998 (E.D. Mich. 1927); *United States v. Jerome*, 115 F. Supp. 818 (S.D.N.Y. 1953); *United States v. Lustig*, 110 F. Supp. 806 (S.D.N.Y. 1953); *United States v. Gallucci*, 54 F. Supp. 964 (D. Mass. 1944); *United States v. Marini*, 16 F. Supp. 963 (S.D.N.Y. 1936); 3 C.J.S., *Aliens*, § 154 (Pocket Supp. 1958).

1111 In *United States v. Parisi*, 24 F. Supp. 414, 420 (D. Md. 1938), an action to cancel defendant's certificate of citizenship, the defense contended that *res judicata* as a doctrine applied to the action. The court rejected this contention stating:

"... Nor is there any doubt now, after recent decisions of the Supreme Court, that the certificate of citizen-

ship based on the naturalization order may be directly attacked by the Government under the special procedure provided for in 8 U.S.C.A. § 405 taken in this case. Naturalization procedure is judicial in character and is not subject to collateral attack; but is not *res judicata* to the extent that it is immune from direct attack in this special proceeding authorized by Congress. *Johannessen v. United States*, 225 U.S. 227, 32 S.Ct. 613, 56 L.Ed. 1066; *United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118, 62 L.Ed. 321; *United States v. Unger*, D.C., 26 F.2d 114; *United States v. Javier*, 57 App. D.C. 303, 22 F.2d 879. . . .”

In *United States v. Unger*, 26 F.2d 114, 116 (S.D.N.Y. 1928), likewise an action to cancel and set aside a decree of citizenship, the court rejected the defense of *res judicata* stating:

“A decree of the state court or of the United States District Court granting citizenship is not *res judicata*, nor is the United States estopped by such decree, although it entered its appearance in the proceeding and unsuccessfully raised the same question. The proceeding under section 15, which provides for a suit in equity being brought by the district attorney to cancel a certificate of naturalization, is not in a
1112 strict sense an appeal, but is in the nature of an added or cumulative remedy for correcting an error in the original proceeding. *United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118, 62 L.Ed. 321; *United States v. Ginsberg*, *supra*; *Tutun v. United States*, 270 U.S. 568, 46 S.Ct. 425, 70 L. Ed. 738; *Johannessen v. United States*, 225 U.S. 227, 32 S.Ct. 613, 56 L.Ed. 1066.”

For these reasons the defense of *res judicata* is not valid.

The defendant also contends that because of the period of time which has elapsed between the granting of the certificate of naturalization and the date of this action,

the Government is guilty of laches and is estopped from bringing this action. The United States Supreme Court in *United States v. Summerlin*, 310 U.S. 414, 416 (1940) has clearly and concisely set the rule when it said,

"It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights. *United States v. Thompson*, 98 U.S. 486; *United States v. Nashville, C. & St. L. Ry. Co.*, 118 U.S. 120, 125, 126; *Stanley v. Schwalby*, 147 U.S. 508, 514, 515; *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132; *Board of Commissioners v. United States*, 308 U.S. 343, 351."

Laches, or lapse of time, cannot be pleaded against the Government in proceedings to cancel a certificate of naturalization. *United States v. Orth*, 51 F.Supp. 682, *reversed on other grounds*, 142 F.2d 969 (4th Cir. 1944); *United States v. Marino*, 27 F. Supp. 155, 156 (S.D. N.Y. 1939); *United States v. Spohrer*, 175 F. 440, 448 (D. N.J. 1910); 3 C.J.S., Aliens, § 157 (Pocket Supp. 1958); CABLE, *Loss of Citizenship, Denaturalization*, p. 60.

The test is not the length of time between naturalization and filing the proceeding to cancel; the test is whether the certificate in its inception was fraudulently procured. If so, an action to cancel may be filed any time after naturalization. It has been held that the defense of laches was not available in a proceeding by the Government to cancel a certificate of citizenship. *United States v. Schneiderman*, 33 F. Supp. 510, *aff'd*, 119 F. 2d 500, *reversed and vacated on other grounds*, 320 U.S. 118 (1943). There are instances of cancellation of certificates of naturalization after a period as great as thirty-five years. *United States v. Wursterbarth*, 249 F. 908 (D. N.J. 1918).

In *United States v. Reinsch*, 50 F. Supp. 971 (W.D. Wash.) *reversed on other grounds*, 156 F. 2d 678 (9th Cir.

1945), an action to cancel the naturalization of the defendant, the lower court held that though thirty-one years had elapsed since the defendant was admitted to citizenship, this lapse of time did not bar a proceeding to denaturalize him. The court stated:

"That the lapse of time does not bar the Government in this type of proceeding has been established by a number of cases. See *United States v. Wursterbarth*, D.C.N.J., 249 F. 908; *United States v. Darmer*, D.C. Wash., 249 F. 989; *Schurmann v. United States*, 9th Cir. 264 F. 917; 18 A.L.R. 1182; *United States v. Herberger*, D.C. Wash. 272 F. 278."

1114 In *United States v. Ali*, 7 F. 2d 728, 730 (E.D. Mich. 1925), an action for the cancellation of a certificate of citizenship, defendant maintained that laches was a defense. In this denaturalization action the court stated:

"The contention of the defendant that the right of the government to maintain this suit is barred by lapse of time is equally without merit. It is not, and cannot be, claimed that there is any applicable statute of limitation; and it is elementary that the doctrine of laches does not apply as against the government, when suing in its capacity as a sovereign and asserting governmental rights. *Chesapeake & Delaware Canal Co. v. United States*, 250 U.S. 123, 39 S. Ct. 407, 63 L.Ed. 889."

In *United States v. Cufari*, 120 F. Supp. 941, 943 (D. Mass.), vacated on other grounds, 217 F. 2d 404 (1st Cir. 1954) the lower court, per Wyzanski, J., had before it the defendant's contention that laches applied in a denaturalization action. The court dismissed this defense, stating:

"If laches were relevant in a proceeding of this nature, brought by the United States, the burden

of proving it would be upon the defendant. Neither from him nor from any other source does it appear when the United States learned of this fraud, nor whether it moved expeditiously thereafter. So there is no factual foundation for the plea of laches. Moreover, there is no legal foundation. The Brenci case (where a delay of two decades occurred) shows that laches is not a defense in this type of proceeding brought by the sovereign."

It therefore appears that the defense of laches cannot be sustained.

1115 Finally defendant's counsel contends that evidence in this case is tainted by wiretapping and cannot be considered by this Court. It should be pointed out, at the outset, that no wiretaps have been used in evidence in this case nor would they have been admitted if offered. What defendant urges, in essence, is that the Government learned of Costello's bootlegging activities by means of wiretaps and that statements made by Costello before investigating authorities, to which reference has been made, were the result of inquiries started as a consequence of wiretapping.

There can be no doubt that, from time to time and over a period of years, law enforcing agencies did tap Costello's telephone wires and probably illegally, in view of the decision in *Benanti v. United States*, 355 U.S. 96 (1957). The extent to which the *Benanti* decision goes is still not clear. See, BROWN & PEER, "*The Wiretap Entanglement: How to Strengthen Law Enforcement and Preserve Privacy*," 44 Cornell L.Q. 175, 181 (1959).

However, not even Costello's ingeniously alert counsel went so far as to contend that the fact that Costello's wires had been tapped gave him immunity for past illegal activities. Therefore, a determination of his objections to the evidence which was offered must be considered in the light of the particular evidence. In each case we must examine the record to see if wiretap evidence was presented.

1116 or if the evidence was obtained indirectly as a result of illegal wiretaps. See *Nardone v. United States*, 302 U.S. 379 (1937) and 308 U.S. 338 (1939). No wiretaps were introduced in evidence in the present proceeding.

The most that can be contended is (1) that the Government learned of Costello's participation in bootlegging by tapping wires at his place of business in the period preceding 1925; and (2) that the interrogation of Costello by the New York City Grand Jury was precipitated by information obtained by District Attorney Hogan as a result of wiretaps on Costello's home telephone.

So far as the early wiretapping is concerned the testimony showed that in the period prior to 1925 the United States Attorney in New York was conducting an investigation of bootlegging activities of a number of persons, including Costello, and that in the course of the investigation certain telephones leading to 405 Lexington Avenue, where Costello had an office, were tapped. The Assistant United States Attorneys in charge of the investigation were: John M. Harlan, now a Justice of the United States Supreme Court; William E. Stevenson, now President of Oberlin College and Herman Stichman, now Trustee of the Hudson & Manhattan Railroad Company. Mr. Stichman and Mr. Stevenson both testified in the trial before me. Their testimony was clear and uncontradicted, and accepted

1117 as true by the Court, that the Government's information as to the bootlegging activities of Costello was not derived from telephone conversations but was derived from statements of certain individuals acquainted with the defendant's activities. The wiretapping was done to get other information but apparently produced no real results. Thereafter Costello was indicted and tried for violation of the prohibition laws. That trial resulted in a hung jury and the indictment was later nolle prossed. It cannot be concluded that the evidence on which the Government brought the present denaturalization proceeding was the fruit of the tap on Costello's wires in those early days.

So far as the relationship of wiretapping to the statements made by Costello before the New York Grand Jury is concerned, the facts are clear. It appears that Mr. Hogan, the District Attorney of New York County, in connection with his law enforcing activities, secured an order in accordance with New York State law permitting him to tap the home telephone of Costello in 1943. In the course of the tapping of this telephone a conversation was intercepted between Costello and one Thomas Aurelio, who had just received a bi-partisan nomination for the New York Supreme Court in which Aurelio thanked Costello for his assistance in getting him the nomination. The District Attorney instituted a Grand Jury investigation as to the circumstances of the nomination, which later led to an investigation of this Aurelio incident before a Referee

1118 appointed by the Appellate Division of the Supreme Court. While it was the intercepted telephone conversation between Costello and Aurelio which precipitated these investigations, this intercepted conversation had no relationship to any bootlegging activities of Costello. The only wiretaps used by the District Attorney covered a period beginning late in 1942 and extending into 1943. When the District Attorney had Costello before the Grand Jury he questioned the defendant about his activities during the years 1920 to 1930 because, as he said, "I wanted to present to the Grand Jury as much as I could with reference to his background . . . I thought the Grand Jury was entitled to know as much as I could present to it about the witness in order to make a judgment with respect to his testimony."

The proposition of the defendant seems to be that because the investigation was precipitated by an intercepted telephone conversation on a purely collateral matter, nothing he said about his criminal activities in other fields could thereafter be used. This would extend the principle of the second *Nardone* case far beyond what the Court determined. It would mean that a man whose telephone had been tapped would be granted immunity for any admissions

which he thereafter made, not in the telephone conversations but in answer to any questions in a later investigation. There is no basis for extending the rule to this degree.

1119 The evidence received in this case was not wiretap evidence nor was it the fruit of wiretap evidence. The objections of defendant to the evidence which was received and considered by this Court are overruled.

It must be kept in mind that the Government is not seeking to denaturalize Costello because he was a bootlegger, or to impose sanctions on him because he was a bootlegger in 1925. The purpose of the action is to restore the citizenship status *quo* as it existed prior to September 10, 1925, on the ground that any change in that status was accomplished by defendant by fraud and the concealment of material facts.

CONCLUSIONS

The Court concludes:

1. This Court has jurisdiction over the person of the defendant and over the subject matter of this action.

2. This action was properly commenced pursuant to the provisions of § 340(a) of the Immigration and Nationality Act of 1952, as amended; 8 U.S.C. § 1451(a).

3. The naturalization of the defendant Costello was induced by the concealment by him of material facts and by fraudulent misrepresentation of facts by him; and if the true facts had been revealed or known defendant's petition for naturalization would have been denied.

4. That the decree of the court, dated September 10, 1925, naturalizing the defendant Costello, and the certificate issued pursuant thereto, was secured as a result of the concealment of material facts, willful misrepresentation and fraud, and that judgment should therefore be vacated, cancelled and set aside by this Court.

1120

Judgment is therefore granted revoking and setting aside the order of this court entered on September 10, 1925, admitting the defendant Frank Costello to citizenship, and cancelling Certificate of Naturalization No. 2136470 issued by this court to the defendant Frank Costello on September 10, 1925.

This opinion constitutes the findings of fact and conclusions of law of the Court.

Let judgment be entered accordingly.

Dated: New York, N. Y.
February 20, 1959

/s/ ARCHIE O. DAWSON
U. S. D. J.

1121

Supplemental Judgment

The above entitled action having come on for trial before me, and an opinion having been filed wherein judgment was granted in favor of the plaintiff, UNITED STATES OF AMERICA, it is

Now on motion of ARTHUR H. CHRISTY, United States Attorney for the Southern District of New York, attorney for the plaintiff,

ORDERED AND ADJUDGED that the order of the United States District Court for the Southern District of New York entered September 10, 1925, admitting the defendant, Frank Costello, to citizenship of the United States of America, be and the same hereby is vacated and set aside; and it is further

ORDERED AND ADJUDGED that the certificate of naturalization which was issued to the defendant by said Court on September 10, 1925, be and the same hereby is cancelled; and it is further

ORDERED AND ADJUDGED that the defendant is not and never was a naturalized citizen of the United States of America and is not entitled to any of the rights or privileges of such citizenship; and it is further

ORDERED that the defendant surrender the aforesaid certificate of naturalization to the Immigration and Naturalization Service, United States Department of Justice; and it is further

ORDERED that the Clerk of this Court transmit a certified copy of this judgment, together with the aforesaid certificate of naturalization, if surrendered, to the Immigration and Naturalization Service, United States Department of Justice, Washington, D. C.

Dated: New York, N. Y., March 9, 1959.

/s/ ARCHIE O. DAWSON

United States District Judge

1123

Notice of Appeal

PLEASE TAKE NOTICE that FRANK COSTELLO, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment of this Court entered in this action on March 9, 1959, adjudging that defendant's certification of naturalization be cancelled and that he is not a citizen of the United States, and from the whole of said judgment as well as every part thereof.

Dated: April 17, 1959

EDWARD BENNETT WILLIAMS
HAYS, ST. JOHN, ABRAMSON & HEILBRON
By: MORRIS SHILENSKY

A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
120 Broadway
New York 5, N. Y.

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

Before:

HON. ARCHIE O. DAWSON,
District Judge.

New York, December 11, 1958
10:30 o'clock a.m.

Appearances:

ARTHUR H. CHRISTY, Esq., United States Attorney, for the Plaintiff;

By Morton S. Robson, Esq., and John A. Guzzetta, Esq., Assistant United States Attorneys.

MRS. ST. JOHN, ABRAMSON & HEILBRON, Esqs., Attorneys for Defendant;

Edward Bennett Williams, Esq., (Washington, D. C.),
Vincent Fuller, Esq., and Morris Shlensky, Esq., of Counsel.

88

Frank S. Hogan

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Robson:

Q. Mr. Hogan, you are the District Attorney of New York County? Is that correct? A. Yes, sir.

Q. You have been District Attorney since 1941? Is that correct? A. January 1, 1942.

Q. 1942. I am sorry. Mr. Hogan, in 1943, did you have occasion to interrogate before the Grand Jury and before the Appellate Division, First Department, of New York, one Frank Costello? A. I did.

89 Q. Talking now about the interrogation before the grand jury, what was that interrogation in connection with, that is, as part of an investigation? A. It was part of an investigation being conducted by my office at the time.

Q. What was, very briefly, the purpose of that investigation? A. It had a broad purpose. It was related to an investigation of the judicial nomination.

Q. Was there a judicial nomination current at that time, that is, was it a recent nomination that you were concerned with? A. Yes.

Q. That was a nomination in 1943? A. Nomination made at a judicial convention in the fall of 1943.

Q. Was that investigation in any way concerned with any activities of any persons, Frank Costello, or otherwise, which took place in 1920 or prior to 1930? A. No.

Q. Now, at the time of this interrogation were you in the possession of any transcriptions or recordings of telephone conversations? A. Yes.

90 Q. Among those transcriptions were there any telephone conversations in which Frank Costello was a participant? A. There was.

Q. Incidentally, Mr. Hogan, do you see Frank Costello, the person you interrogated, in this courtroom? A. I do.

Q. Would you identify him, please? A. Seated at the table two to the right of Mr. Williams.

Mr. Robson: May the record indicate that the witness has identified the defendant?

The Court: Yes.

Q. Do you recall the substance of the contents of these wiretaps? A. I do.

Q. Generally, what did they relate to? A. They were conversations between Mr. Costello and various political leaders with reference to the prospective nomination for the Supreme Court in the First Department and they had to do with other activities of Frank Costello.

Q. Did these wiretaps in any way relate to any of
91 Frank Costello's activities during the period of 1920 to 1930? A. Not to my recollection.

Q. To your recollection was there any information at all derived from those wiretaps relating to those activities prior to 1930? A. I can recall nothing pertaining to that period.

Q. Do you recall when these wiretaps were made the dates on which the conversations took place? A. Yes, the interception commenced in May of 1943 and was concluded in November.

Q. Were these the only wiretaps which were in your possession at the time of this interrogation? A. That is my best recollection.

Q. Now, during the course of your interrogation did you have occasion to question Mr. Costello about his activities in prior years, specifically the years 1920 to 1930? A. I did.

Q. Did you have any particular purpose in questioning him about those activities? A. Yes, I wanted to present to the grand jury as much as I could with reference to his background, his activities from the time he came to
92 New York until the date of the interrogation.

Q. Were these activities which you were questioning him about in any way directly involved with the investigation which you were conducting? A. Yes, I thought so.

Q. In what way would you say they were involved? A. I thought the grand jury was entitled to know as much as I could present to it about the witness in order to make a judgment with respect to his testimony.

Q. The facts that you questioned him about were not concerned or involved with the facts that you were investigating? A. Only as I have indicated.

Q. Now, at the time you interrogated him what information, if any, did you have in your possession concerning his prior activities upon which you based your questions? A. Well, I had a record of the telephone conversations between May and November, I had his police record, I had numerous newspaper files, office records, and a variety of other material obtained for me by detectives and investigators assigned to my office.

Q. I am afraid I didn't make myself clear. I was
93 interested in the interrogation concerning his activities between 1920 and 1930. With regard to that interrogation what information were you basing your ques-

tions on? A. Office records, surveillance reports, newspaper files and like material.

Q. For example, I believe you questioned Mr. Costello, did you not, about his activities in connection with bootlegging? A. Yes, I did.

Q. What information did you have leading you to believe that he had been engaged in bootlegging activities? A. To the best of my recollection, newspaper reports, court records, and records of the New York City Police Department.

Q. Did you at any time during the course of your interrogation either state directly to Mr. Costello or indicate indirectly that you were in possession of wiretaps or information derived from wiretaps relating to those earlier activities? A. Not to my recollection.

Q. Mr. Hogan, the questions which I asked you concerning the interrogation before the grand jury—if I were to ask you the same questions with regard to your in-
94 terrogation before the Appellate Division in the Matter of Aurielo, would your answers be substantially the same? A. They would be the same.

The Court: The questions asked before the Appellate Division? You mean questions asked before Commissioner or Master appointed by the Appellate Division?

Mr. Robson: That is correct.

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Mr. Robson: May I ask Mr. Williams whether he will concede the authenticity of these transcripts at this time? Else I will ask Mr. Hogan.

Mr. Williams: I will concede them if they are the ones I have seen.

Mr. Robson: These are the ones you have seen.

May we just mark these for identification at this point, and I have no further questions.

(Marked Government's Exhibits 2 and 3 for identification.)

95 Cross-Examination by Mr. Williams:

Q. Mr. Hogan, do you recall that taps were put on the resident telephone of Mr. Costello on May 7, 1943 pursuant to an order of a New York State court? A. I have no doubt that is the date, Mr. Williams.

Q. And that was at the request of one of your assistants? A. That's correct.

Q. During the time that that tap was on Mr. Costello's phone there was a conversation between him and a Judge Aurelio, is that not the fact? A. That's right.

Q. And it was that telephone conversation which prompted you to present the matter to the grand jury about which Mr. Robson has just interrogated you? A. That is true.

Q. At the time that you presented this matter to the grand jury, which I believe was on October 13, 1943, Mr. Costello was called as a witness by you? A. Yes.

Q. During the course of the interrogation of Mr. Costello you confronted him with numerous wiretap records, did you not? A. I did.

96 Q. Do you recall, Mr. Hogan, that you told Mr. Costello during the course of your interrogation of him that you have had in your possession records of dozens of conversations between him and one Frank Ericson? A. I would have to look at the record, but it is possible.

Q. I am going to hand you this, Mr. Hogan. It has been marked as Government's Exhibit No. 3 for identification, and I direct your attention to page 573. A. Yes. I see that question and answer and I have no doubt that the record is correct.

Q. Do you recall that you told Mr. Costello during the course of your interrogation of him that you were in possession of some 130 calls between him and a man named Moretti, and I direct your attention to page 602, Mr. Hogan, to refresh you on that. A. I see a reference such as you have described, and the record is accurate.

Q. Yes, sir. Now, Mr. Hogan, those taps to which you made reference in your interrogation of Mr. Costello, were

taps that antedated 1943, were they not? A. I beg your pardon?

97 Q. You made reference to taps of conversations between the defendant and one Erierson and then you made reference to some 130 calls between the defendant and one Moretti. A. Yes.

Q. Those were taps that antedated the May 7, 1943 period? A. No, they were not.

Q. Were those taps all within the period from May 7th until November of 1943? A. Yes, except the reference to Moretti, as you will note here on page 602, is to the five months preceding February 1943.

Now all that means is that there was a record of the Telephone Company showing conversations between Costello in New York and Moretti in New Jersey. They were not intercepted. That was simply a telephone record.

Q. Those were not interceptions? A. That's right.

Q. Now, Mr. Hogan, throughout the whole interrogation—and I do not mean to characterize your interrogation of the witness—but I want to ask you if it is not fair to say

98 that throughout the whole of the interrogation of the witness you brought to his attention telephone calls to which he had been a party and which had been intercepted over his line. A. I did that whenever his memory seemed to fail, to refresh it.

Q. As a matter of fact, is it not the fact that you confronted him with about 75 to 100 calls in that examination? A. That may be. If you have made a count I would accept it.

Q. Do you recall, Mr. Hogan, how long he was under oath and under examination by you in front of that grand jury? A. I don't recall.

99 Q. It was a matter of a couple of hours? A. Oh, at least.

Q. Two hours? A. Yes.

101 Q. All of the questions that were propounded to Mr. Costello in the 1943 grand jury were questions

that were relevant and germane in your opinion to the so-called Aurelio matter, is that not so? A. I thought they were relevant and germane or I wouldn't have asked them, but I thought the background of the witness was important and that the grand jury was entitled to know everything about the man.

Q. As a matter of fact, one of the positions that you were taking as New York County District Attorney was that Mr. Aurelio should be disqualified from sitting by virtue of his relationship with this defendant, isn't that so?

A. And the notoriety this defendant's reputation had earned.

Q. And so that you, in the development of your case, conceived it to be relevant to trace the background of this defendant insofar as you could and from as far back as you could? A. I did.

102 Q. And all of that came about as a result of the conversation intercepted in May of 1943 between this defendant and Judge Aurelio?

Mr. Robson: I object to "all of that" unless Mr. Williams states what "all of that" means.

Mr. Williams: Yes, I will state what "all of that" means.

Q. By "all of that" I mean, Mr. Hogan, all of the interrogation of Mr. Costello before this particular grand jury in October 1943. A. The grand jury interrogation was precipitated by a conversation between this defendant and Judge Aurelio, not in May of 1943 but sometime very close to the grand jury interrogation, possibly September or October of 1943.

Q. And you say precipitated. The interrogation of this witness was directly related to the Aurelio matter which ultimately was heard before Judge Sears? A. I used the word "precipitated" because the interception had nothing to do with an investigation of Judge Aurelio. The order permitting us to intercept the telephone conversations was in connection with another investigation and these conversations were by-products of that investigation.

Q. I understand. My question perhaps was not
103 clear. I say the actual grand jury investigation was brought about by the intercepted telephone conversations between Mr. Costello and Judge Aurelio, notwithstanding the fact that the order permitting the wire-taps may have had nothing to do with that; is that correct?

A. I think that that is fair, and I use the word "precipitate" again because there would have been a grand jury interrogation in any event, but the conversation between the defendant and Judge Aurelio made necessary questioning at the time it took place.

Q. I take it just as Mr. Robson asked you concerning the hearing before, I believe it was Commissioner Sears at the time— A. Judge Sears.

Q. —Judge Sears at the time, was in much the same vein as the interrogation before the grand jury. A. That is true.

Q. And at that time there was mention of these wire-tapped conversations and the witness was confronted with them; is that not so? A. That is true.

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106

Joseph Conway

a witness called in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Robson:

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Q. Were you employed by the United States Post Office in 1925? A. 1919-1954.

Q. 1919 to 1954? A. Yes.

Q. In what capacity were you employed by the Post Office in 1925? A. I was a letter carrier.

Q. A letter carrier? A. Yes.

107 Q. You delivered mail on foot to various addresses? A. That's right.

Q. Do you recall at any time having on your route a building known as 405 Lexington Avenue? A. Yes, sir.

Q. Approximately when was that? A. From 1924 to 1926.

108 Q. Do you recall an office in the building at 405 Lexington Avenue, Room No. 516? A. Yes, 516.

Q. Do you recall delivering mail to that office? A. Yes, sir.

Q. Was there one person to whom you delivered mail in that office or was there more than one? A. There was more than one.

Q. Do you recall the names of any of the persons? A. Oh, yes.

Q. Would you tell us some of the names that you can recall. A. Frank and Edward Costello, Loretta Costello, Frank Goss, Harry Sausser or Harry Saucier, and there was a Mr. Ellis, Mr. Merman or Mr. Mehrman, Jack Aloise, and then there was a Mr. Hunt, Mr. Reeves, and that is to my recollection, I don't remember any more.

Q. Did you ever deliver mail personally to any of these people? A. Oh, yes.

Q. Did you know which one was Frank Costello? A. Very well.

109 Q. Do you see the person that you then knew as Frank Costello in the courtroom? A. I think I could remember, although I have not seen him in 31 years. Yes, that man down here with his elbows this way (demonstrating).

The Court: The witness has identified the defendant Costello.

Q. Did you ever have occasion to deliver any registered mail to Mr. Costello? A. Yes, I did.

Q. And did he sign for this mail when you delivered it? A. He signed it. That is how I remember any of them, from signing for mail. That is how I remembered their names.

Q. I show you Government's Exhibit 4 for identification and I ask you if you can identify any of the persons on that exhibit.

Mr. Williams: May we see it, please?

A. Yes, I can remember.

Q. Don't tell us who they are. Can you identify some of them? A. Yes, I can remember.

Q. Would you tell us now one at a time whom you can identify and tell us who they are. A. Well, this is Frank Costello; and this is Harry—

Mr. Robson: Shall we mark it with the letter "A"?

Mr. Williams: Why don't you mark it with "FC"?

Mr. Robson: All right, "FC", the person identified as Frank Costello. A. This is Mr. Ellis; this is—

Q. One moment, please.

Mr. Williams: Mark Mr. Ellis "EE". I think it is Edward Ellis, isn't it?

Mr. Robson: Yes, that's right.

Q. All right. A. This is Harry Sausser. I don't know whether it is S a u s s e r or S a u c e r. I don't know.

Mr. Williams: "HS".

Mr. Robson: "HS".

Q. Is there anybody else that you recognize on that picture? A. No, there is nobody else.

Mr. Robson: I will offer Government's Exhibit 4 for identification in evidence.

The Court: Any objection?

Mr. Williams: I have no objection, your Honor.

The Court: All right, received in evidence.

(Government's Exhibit 4 for identification received in evidence.)

Q. I show you Government's Exhibit 5 for identification and I ask you if you recognize that individual. A. That is Harry Sausser.

Q. That is Harry Sausser? A. Yes.

Q. The same one you identified on the other photograph.

A. Yes.

Mr. Robson: I offer that in evidence.

Mr. Williams: No objection.

(Government's Exhibit A for identification received in evidence.)

The Court: Go ahead.

Q. Do you recall whether Frank Costello ever received any envelopes from a bank? A. Yes, I do remember pretty well.

112 Q. What kind of an envelope was this? A. From the bank. It was canceled checks, well, I understand that it was canceled checks because that is what the government men were looking for, his canceled checks.

Mr. Robson: I will consent to strike that which he says he understands.

Q. This was an envelope that came from a bank with a little glass window in it? A. Yes, a brown envelope. That is what the government inspectors were looking for; that is just the letter they got before.

The Court: All right, that is enough.

The Witness: I call a spade a spade.

Q. Mr. Conway, on how many occasions would you say per week did you see Mr. Costello in this office at 405 Lexington Avenue? A. Well, I figure about, well, at least three or four times a week.

Q. What about this individual whom you identified as Harry Sausser? How often do you recall seeing him?

A. About the same amount, I would judge.

Q. Also about three or four times a week? A. Yes.

Q. How often did you deliver mail to this office, in general? How many times a day? A. Delivery at that time was about five a day. I suppose I delivered about four of them.

Q. There has been a big change since then, hasn't there?

A. Yes, that's right.

Q. When you delivered you actually went into the
113a office? A. No, there was a railing inside the door
and you couldn't go any farther.

Q. But you went inside from the corridor? A. Yes,
from the corridor, yes.

Q. Did you ever see a typewriter in that office? A.
Never.

Q. Did you ever see a secretary in that office? A. Never.

114 Q. Do you recall a conversation with somebody
about a bank statement or an envelope coming from
a bank addressed to Mr. Costello? A. Yes, I do.

Q. Did you have a conversation with somebody about an
envelope coming from a bank? A. Yes, they told me to
watch—

The Court: You answered the question. You did have
a conversation?

The Witness: Yes.

Q. This conversation was held with whom? A. Oh, yes.

Q. Whom did you have that conversation with? A. Oh,
with a man, an Immigration inspector.

The Court: Immigration inspector?

The Witness: Yes. Another letter you are speaking of?

Q. I am talking about back in 1925. A. Yes.

115 Q. Did you have a conversation with anybody
back in 1925 about an envelope from a bank? A.
You better give me a better lead than that.

The Court: I think that is a justifiable comment by the
witness.

Q. Do you recall the arrest of Mr. Costello in 1925?
A. Oh, yes.

Q. When did that take place? A. That was either the
first week of November or the first week of December,
1925; I couldn't say whether it was November or December.
It was after he got the bank letter.

Q. What bank letter? A. The bank letter from his
cancelled checks.

Q. Did you do anything with this bank letter that you refer to? A. No, I just passed it over to the inspector. He looked at it and he handed it back to me.

Q. Which inspector was this? A. The senior inspector, postal inspector.

Q. Do you remember his name? A. Frank Shea. He was well known at that time.

Q. Had you been watching for this particular envelope? A. Oh, yes. They were watching for it.

The Court: And they told you to watch for it?

The Witness: Yes.

129

Mitchell S. Solomon

called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Robson:

Q. Mr. Solomon, by whom are you employed? A. By the United States Immigration Service, Department of Justice.

Q. I show you Government's Exhibit 8 for identification and ask you to tell us what that is. A. This is the admitted or docket slip. This also bears the number 61756 and the court, is listed as 2270. This is filled out by the Preliminary Examiner in his examination of the applicant and his two witnesses.

152

New York, December 12, 1958,

10:30 o'clock a.m.

161

Cross-Examination by Mr. Williams:

166

Where Government's Exhibit 8 says: "US and NYS since April 2, 1895" that means that the

applicant in this case had been in the United States and had lived in New York State since April 2, 1895; right?

A. Yes.

Q. And "PA6 mos." means what, Mr. Solomon? A. I believe it means present address, six months.

Q. And then "MNY Sept. 23, 1914" means married in New York September 23, 1914, is that right? A. I believe so.

Q. And "R/W" means resides with wife? A. I think so.

Q. And "n" means no children, I take it. A. I don't know whether that is a typographical slip.

Q. And then "SERF" means speaks English and reads English, is that right? A. That's right.

Q. "SNYSP8G" means what? A. I think it is school New York.

Q. "8G" would be eighth grade, is that right? A. I don't know whether that is an 8 or not. It might be.

Q. And "G/F" means what? A. Government fair.

The Court: Government fair?

The Witness: I think so.

The Court: What does that mean?

The Witness: I think the examiner asked him some questions about the nature of the Government of the United States.

181 Mr. Williams: Your Honor, I will concede that each of these directories, which apparently are the Manhattan and Bronx directories for 1923, 1924, 1925 have a listing Edward Costello, 405 Lexington Avenue, Vanderbilt 8745.

I have grave questions in my mind with respect to the materiality of this evidence but I do not think that it is properly the time to argue that point.

Mr. Robson: May we also have a concession, Mr. Williams, that there is no listing for Frank Costello at that address?

Mr. Williams: There is no listing in these directories for Frank Costello at 405 Lexington Avenue.

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Robson: o

Q. Mr. Kessler, have you ever been arrested or convicted of any crime? A. I have.

Q. Will you tell us when and what the crime was. A. Well, I have a few of them.

Q. Tell us to the best of your recollection.

205 A. Violation of the Prohibition Act in 1923 or 1922.

Q. Were you convicted? A. Yes.

Q. Were you sentenced? A. I was sentenced.

Q. And what was your sentence? A. To Atlanta two years.

Q. What else? A. Violation of the Prohibition Act in 1926 or 1928, suspended sentence.

Q. Anything else? A. And income tax violation.

Q. When was that? A. Suspended sentence.

Q. When was that? A. I think 1926 or 1928.

206 Q. How old are you, Mr. Kesler? A. 69; I will be 69 in March.

Q. Now, Mr. Kessler, at one time you were in the wholesale liquor business? Is that correct? A. From 1910 on.

Q. From 1910 on? A. Yes.

Q. Do you recall the passage of the 18th Amendment and the National Prohibition Act? A. Would you repeat that?

Q. Do you recall the adoption of the 18th Amendment and the passage of the National Prohibition Act? A. Yes.

Q. At that time were you in the wholesale liquor business? A. I was.

Q. And under that Act, as I understand it, you were then restricted to selling alcoholic beverages only for medicinal purposes? Is that correct? A. Right.

207 Q. Did you continue in business after prohibition? In the liquor business. A. Well, I went into another

business, but made a failure of it, and went back into the liquor business.

Q. When? A. In 1920.

Q. When did you go back into the liquor business?

A. 1920.

Q. Was that the business of selling liquor for medicinal purposes? A. It was, but we didn't do it.

Q. You didn't sell liquor for medicinal purposes? A. No.

Q. Would you describe your activities at that time? Just what did you do? A. I had a permit from the Government, a \$100,000 permit, and I had a place on 28th Street off Sixth Avenue. I generally carried a few thousand cases of liquor on hand at all times.

Q. This was liquor that you withdrew from Government warehouses? A. From Government warehouses.

Q. And that was to be sold for medicinal purposes?

A. It was to be sold for medicinal purposes.

Q. What did you sell it to? A. I sold it to speak-easies.

208 Q. Did you obtain liquor from any other source besides Government warehouses? A. By boats later on.

Q. How much later on was this? A. About, oh, a year later, 1921.

Q. 1921? A. Yes.

Q. Describe those operations. A. Well, I had a large boat out at sea, a 1500-ton steamer, that I brought liquor from Europe. I had a bottling plant at the time in Hamburg and then I had smaller boats running, fishing boats that carried 500 cases and they brought them in nightly. They brought in 500 a night.

Q. 500 cases a night? A. Yes.

Q. That was from the— A. From the large steamer, yes.

Q. Where was this large steamer located? A. Somewhere off Montauk Point.

Q. How long were you so engaged in the withdrawal of liquor from warehouses and the importation of liquor from Europe? A. Until the end of 1923.

209 Q. Approximately how substantial was your business? How much liquor did you import or sell?

A. On an average of about three, four thousand cases a week.

Q. What would that run dollarwise? What did you pay for this liquor? A. It stood me about \$12 to \$15 a case, and I would—according to the market—if it brought a hundred, I got a hundred; if it brought fifty, I got fifty.

Q. Fifty what? Dollars per case? A. Dollars per case.

Q. Now, do you know the defendant, Frank Costello? A. I do.

Q. Do you see him here in the courtroom? A. I don't see him here.

Q. Stand up, please. A. There is Frank there (pointing).

210 Mr. Robson: May the record indicate that the witness has identified the defendant?

The Court: Yes. I said at the end of the table, because he pointed right at Mr. Costello. That is how I knew he was the man he meant.

Q. When did you first meet Mr. Costello? A. Late 1919 or the early part of 1920.

Q. Was this prior to Prohibition? A. No, Prohibition was in effect.

Q. Prohibition was already in effect when you first met him? A. Yes.

Q. Where did you meet him? Do you recall? A. That I don't recall.

214 Q. Mr. Kessler, did there come a time when you had a conversation with Mr. Costello concerning bootlegging? A. Very often.

Q. Tell us when the first time was that you discussed

bootlegging liquor or anything relating to it with Costello. Approximately. A. We may have discussed it during the whole of 1920 but in the latter part of 1920 he told me that if I bought some trucks for him and his brother they would haul the merchandise for me from Long Island, from the place that I brought the merchandise in from the big boat.

Q. Do you recall where this conversation took place? A. I don't recall.

Q. Could it have been at your office? A. It might have been possibly at my office.

Q. Did you do anything pursuant to that conversation? A. I did. I advanced him the money, or I bought the trucks. I think I advanced him the money and they bought the trucks.

Q. Do you recall how much you advanced? A. I have not any idea.

Q. Any approximation? A. A few thousand dollars.

Q. And do you remember how many trucks were bought? A. I think two or three.

Q. Two or three trucks? A. Yes.

Q. Thereafter, did Frank Costello commence trucking liquor for you? A. Well, I can say Frank Costello or his brother.

216 Q. Were they both active in this, or just one of them? A. That I would not know.

Q. Now, will you describe the arrangements which were made? How you operated? A. Well, they had a house out in Halsey Street, Long Island City, and in the back of that house—at the side of the house, was a large yard. In the back of the yard was a 50 by 100 garage, jutting out to the other street. I took a mortgage subsequently on that same garage, and every night they would haul—whatever they hauled they took into that garage. I would send small trucks over from New York to bring the stuff to some of my other warehouses for delivery.

217 Q. How did you advise them of where and when to pick up merchandise? A. I would call them up

on the wire at their office over at Lexington Avenue and tell them, or I would send someone over.

Q. Do you remember where that office was on Lexington Avenue? A. Where the Chrysler Building is now. I wouldn't know the number.

Q. Do you remember what the address was? A. I think that is 405, I think, or 404. I don't know.

Q. 405 Lexington Avenue? A. Where the Chrysler Building is now.

Q. Whom would you talk to when you made these arrangements? A. Whoever was in the office.

Q. Do you recall talking to Frank Costello on occasions about these arrangements?

218 A. I would call anybody at the office, whoever was there, whether Frank or Eddie or whoever was there, his bookkeeper—I don't know whether he had a bookkeeper at the time.

Q. Well, do you have any recollection of having spoken to Frank on any occasions? A. Very often.

Q. You did speak to him often in connection with these arrangements? A. Of course.

Mr. Robson: Will you mark this for identification, please.

(Marked Government's Exhibit 12 for identification.)

Q. I show you Government's Exhibit 12 for identification and I ask you if you can tell what those two pictures represent. Do you recognize them? A. That is Costello's house at the left and the garage on the next street.

Q. Is that the house that you were referring to in Long Island? A. Yes.

Q. And is that the garage that you referred to as 219 being behind it? A. Yes.

The Court: You say, Mr. Kessler, that was Costello's house. Did he live there?

The Witness: No, not Frank Costello. His brother Eddie lived there and his mother.

The Court: And that is the house adjoining this lot where the garage was?

The Witness: Right.

(Government's Exhibit 12 for identification received in evidence.)

Q. Incidentally, how long did the Costello brothers continue to work for you at trucking liquor? A. Until the very end, when I went away, until about December of 1923.

Q. Was the liquor stored in any other place besides the garage which you just described? A. That the Costellos had?

220 Q. Yes. A. Yes, they had a large mansion, the Blackwell Mansion in Long Island. It originally belonged to Blackwell that the island was named after, and I had about 2500 or 3000 cases there that I had taken from a warehouse in New York City. Also about 2500 gallons of alcohol and about 1000 cases of whisky that I had brought from the boat. That is the place that was raided.

Q. Had you made any arrangements with anybody to use this house? A. I never saw the house. They took it in their name.

The Court: Who?

The Witness: The Costellos.

Q. The Costello brothers made the arrangements to get this house? A. Yes.

Q. Had you discussed it with Frank Costello at any time? A. I had to discuss it with both of them.

The Court: What did you do? Pay a certain amount of money to them for storing the liquor?

The Witness: I paid a dollar for haulage and a
221 dollar for storage.

The Court: Whom did you make those arrangements with?

The Witness: With either Frank or Eddie, I don't remember who. I can't pinpoint who it was.

Q. Were there occasions when you made the arrangements with both of them? A. With either one or both of them.

Q. But you recall making arrangements at one time or another with both Frank and Eddie? A. Very often.

Q. Incidentally, about how many cases did they truck for you a week? A. Well, my boat came in every night; I guess about 3000 a week.

Q. In other words, you would have paid them about \$3000 a week— A. Plus a dollar for storage. That is \$6000.

Q. That is \$6000 a week? A. Yes.

The Court: Did you pay it to them in cash?

The Witness: Either cash or check, or in merchandise once in awhile.

Q. Do you have any recollection of having
222 arranged for any construction work of any sort out in Halsey Street? A. I built a vault in the garage.

Q. Was that a vault in the ground? A. Underneath the garage.

Q. Underneath the garage? A. Yes.

Q. What was this for? A. For storage of merchandise to hide it.

Q. You used to hide it in the vault? A. Yes.

Q. Was this vault concealed in any manner? A. All you had to do was take off one of the larger slabs and a stairway would lead down into the vault.

Q. And did you ever discuss the arrangements for this job with Frank Costello? A. I may not have discussed it with him at all; I may have discussed it with his brother.

Q. You don't have any independent recollection? A. I don't have no recollection at all.

Q. But whisky which was brought in was stored there; is that right? A. Yes.

Q. Did you ever have occasion to visit 405 Lexington Avenue or the offices which you talked about?

A. Oh, I went there, not often, possibly once a week or once every two weeks. My office was only around the corner at Madison Avenue.

Q. Did you have occasion to see Frank Costello there?

A. Yes, often. That is when I came there.

Q. You said on occasions you used to pay Frank Costello with merchandise. What do you mean by pay him with merchandise? Did you pay him in liquor? A. I wouldn't pay him in full with merchandise. They might take 50 or 100 cases.

Q. Did you ever have any conversation with them as to why they took these cases, as to why they wanted them?

A. No, no conversation with them.

Q. Do you know what they did with the cases? A. I have no idea.

Q. Do you recall a conversation you had with Frank Costello regarding some whisky that was missing? A. You see, the Government was after—I had 3000—

Q. First, do you recall that conversation? A. I do.

224 Q. Would you tell us what that conversation was and the events which led up to the conversation.

A. Well, I missed—

Mr. Williams: Can you fix that in point of time?

Mr. Robson: I am sorry.

Q. Can you tell us when that conversation took place?

A. Around the beginning of 1923—the end of 1922 or the beginning of 1923, I can't pinpoint the date.

Q. Well, the best of your recollection. A. That is the best of my recollection.

Q. Would you tell us now what that conversation was. A. There were 500 cases of Scotch missing that were easily marketable at \$110 a case, it is quite a little money, and I found out that it was on the market where I had taken it off due to the fact that the Government was looking for it; and I found that it was being sold in New York.

I knew it only came from one source, and I accused Costello of it.

Q. And what happened? A. Well, there was a little argument over it and we made up again. We had to make up.

225 Q. I beg your pardon? A. I say we had to make up.

Q. Why did you have to make up? A. Well, he knew all my warehouses. I had merchandise with him. It was compulsory.

Q. Incidentally, where had those 500 cases been that you didn't think were on the market and which turned up on the market? A. Where did they disappear?

Q. No. Where had they been? A. In the Blackwell Mansion.

Q. Had Frank Costello stored them there for you? A. I don't know whether it was Frank, call it Frank and Eddie, call it Eddie.

Q. Do you recall anything that Frank Costello said to you during the course of this argument or anything he did during the course of this argument? A. Well, we had an argument at the hotel where I lived, at the Ansonia at the time. I don't recall any—what we said or what we did.

Q. Is that the Ansonia Hotel here in New York? A. Yes.

Q. Where is that located? A. 73rd and Broadway.

226 Q. After this argument you made up and continued working again together; is that correct?

A. Yes.

Q. You stated earlier that you were convicted in 1923 and sentenced to two years? A. Yes.

Q. Did you have a conversation with Frank Costello before you went to jail? A. I must have had a number of conversations with him.

Q. Do you recall any conversation with Frank Costello which related to the fact that you were going to jail or what was to be done in the future or what was to happen in the future? A. You see, I had lost all my merchandise

in the Blackwell Mansion, about a quarter of a million dollars' worth. The place had been raided. But they kept on trucking for me. I didn't know until later on that in May 1923 this merchandise—through the Court of Appeals—that the Costellos had gotten all that merchandise back, but I was never told about it.

That was quite a good start for them to get monetarily, and when I left for Atlanta, Frank Costello personally asked me—I didn't know about this, him having
227 gotten this merchandise back—asked me for some money so he could continue on.

I think I left him either 100 or 200 cases.

That is the last I saw of him until I came out and I asked him for it and he laughed it off and I forgot about it.

Q. You asked him for what? A. For the money for this merchandise.

Q. He never paid you for it, you say? A. Never paid me. Everybody else I left money with—and it amounted to a lot of money—I gave one man \$50,000; another man \$40,000, everybody paid back.

Q. When did you go to speak to Mr. Costello about this payment for the merchandise? A. About 1926 or the latter part of 1925. I came out in 1925.

Q. Mr. Kessler, when was the first time you spoke to anybody in the Government about your connection with Frank Costello? A. I think I was called down to the FBI about ten years ago and they mentioned over the wire why they wanted to see me, and I called Costello's lawyer at the time, George Wolf, and I told him I have no idea what it was all about, but they seemed to ignore me, and
228 I went by myself.

Q. Is this the FBI you are talking about or the Immigration Service? A. I am talking about the FBI, in the same building, I think on the fifteenth floor. George Wolf seemed to ignore me. I called Costello a number of times at the hotel uptown but they didn't want to—so I dropped it.

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229 Cross-Examination by Mr. Williams:

230 Q. You testified this morning under examination by Mr. Robson that there came a time when you had a conversation concerning some trucks in which you were going to haul your whisky. A. That's right.

Q. And you advanced some money, I believe you said, to the Costellos to buy trucks. A. Right.

Q. Is that correct? A. Correct.

Q. And you fixed that conversation in point of time in what year? A. I guess about 1920, the beginning of 1921, I can't pinpoint any date because that is 40 years ago we are discussing.

Q. As a matter of fact, these dates are very hazy in your mind, is that not correct? A. The dates are, correct.

Q. The dates of the activities which you described? A. Not the dates of the activities, I described; just the dates.

Q. The dates of the activities are hazy in your mind?

240 A. There is a difference between activities and the advancement of money. In other words, I don't remember the day I advanced the money or the day I may have had a talk with someone, but I know it happened between the end of 1920 to 1923, let us say, that period of time.

Q. Did you advance money for the purchase of trucks? A. Right.

Q. And that money was advanced to Eddie Costello; is that right? A. I didn't know Eddie Costello.

Q. When did you get to know Eddie Costello? A. After Frank introduced him to me.

Q. When did he introduce you to him in relation to the conversation that you had with him? A. Possibly the end of 1920 or the beginning of 1921.

Q. How much money did you advance for the purchase of these trucks? A. I haven't the least idea.

Q. You have no recollection? A. None at all. I know I paid for them.

Q. This morning you said it was two or three
241 thousand dollars. A. It might have been more.

Q. Do you know how many trucks were actually
bought? A. Two trucks, I think.

Q. Two trucks were bought? A. I don't remember
exactly.

Q. Was that a trucking business that Eddie Costello
ran from Halsey Street? A. He never had a trucking
business until I gave him the trucks.

Q. I understand that. But that trucking business or
those trucks that you gave him were run from Halsey
Street? A. That's right.

Q. And that is where Eddie Costello lived, isn't
242 that so? A. Yes.

Q. 114 Halsey Street. A. I don't know the
number.

Q. Eddie Costello was older than Frank Costello, is
that not right? A. Yes.

Q. About ten years older? A. I don't know the exact
number of years.

Q. But you did know that he was older than his brother?
A. He was, yes.

Q. These trucks which you bought were stored or housed
at Halsey Street at Eddie Costello's home, is that right?

A. That's right.

Q. Eddie Costello is the Costello who ran that hauling
business or trucking business, is that not so? A. Yes.

Q. There came a time, you said, when you went to 405
Lexington Avenue and you went there so frequently as
maybe once a week, is that right? A. Possibly more.

Q. In what years did that take place? A. I guess 1922
and 1923.

243 Q. Did you have conversations at 405 Lexington
Avenue concerning the trucking business? A. I
guess that is the only thing I could discuss.

Q. And it was Eddie Costello with whom you discussed this? A. It might have been either Eddie or Frank, whoever was there.

Q. Isn't it a fact that Frank made the arrangements for Eddie to get these trucks so that he could go into business when he had the conversation with you in 1920?

A. He may have.

Q. Isn't that the fact, Mr. Kessler? A. I can't state it as a fact because I wouldn't take a stranger off the street, whether it was Frank's brother or anybody else's brother and advance him money. I didn't know the man. I advanced on the strength of Frank Costello.

Q. Isn't it a fact that the money was advanced for a business which Eddie was to operate, namely, the trucking business? A. That is between themselves, I don't know.

Q. You don't know on that subject? A. I don't know.

244 Q. Isn't it a fact that Eddie Costello actually ran the trucking business during those years? A. He may have. I can't state it as a fact because I don't know. I don't know what interest Frank had with him or Eddie had with Frank. Frank may have had nothing or Eddie may have had no interest.

Q. You have no information on that subject? A. I have none at all. I can't give you concrete information, I would only be guessing if I told you.

Q. During the period when you knew Frank Costello between 1920 and 1923, did you know that he had engaged in a number of real estate transactions? A. I didn't know.

Q. You did not know? A. No.

246 Q. I will ask you, Mr. Kessler, weren't you aware that Mr. Frank Costello was conducting a real estate business? A. I was not.

Q. At 405 Lexington Avenue? A. I was not aware. He may have. I don't know.

Q. You had no personal knowledge of real estate transactions in which he was engaged? A. I was not that close. I don't know.

247 Q. Now you testified this morning concerning some whisky which was stored in a building and that you called Blackwell's Mansion. Where is that, Mr. Kessler? A. In Long Island City.

Q. That was a private house which was being used as a storage plant? Is that what it was? A. It was a large mansion, a pretty large mansion. I was never inside of it.

Q. You were never inside of it? A. No.

Q. You had had whisky stored there during the years 1922 and 1923? A. Yes.

Mr. Williams: Do you have those pictures, Mr. Robson?

Q. Mr. Robson showed you what has been marked as Government's Exhibit 12 this morning. He showed 248 you a picture of a garage and a picture of a house. A. That's right.

Q. Now the house is the house in which Edward Costello lived; is that right? A. And his mother.

Q. And his mother. And the garage is the garage behind that house where your whisky was stored; is that right? A. That's right.

Q. Is that also where the trucks were kept by Eddie Costello? A. They were.

Q. The two trucks? A. The number of trucks I don't know.

Q. Excuse me? A. The number of trucks that he kept there I don't know.

Q. Do you recall what kind of trucks they were, Mr. Kessler? A. I think they were Macks.

Q. Mack trucks? A. Yes.

Q. Were they large trucks or small panel trucks? A. Large trucks.

249 Q. They were large trucks? A. Yes. I would send my small panel trucks to take some of the mer-

chandise to New York from there. I had a half dozen, possibly more, panel trucks.

Q. There were other Costellos who lived in that Halsey Street area who worked for Eddie or for you, were there not? A. They never worked for me.

Q. Some nephews. A. The only one that ever worked for me was Costello's brother. Otherwise nobody worked for me. The nephews may have worked for Eddie, but I don't know which ones. I may have met them.

Q. The only one who ever worked for you was Eddie Costello? A. Eddie Costello's brother worked for me—I mean Frank Costello's brother-in-law worked for me.

Q. What was his name? A. I don't remember.

Q. You don't recall? A. His wife's brother.

Q. Now during 1923 you had conversations with Eddie Costello concerning the whisky at Blackwell's
250 Mansion, did you not? A. I did.

Q. It was Eddie Costello who was in charge of the storage of this whisky for you at Blackwell's Mansion? A. Well, you can't pinpoint and pick an individual. My main trust was not Eddie Costello. My main trust was Frank Costello. Eddie Costello could not hold a conversation with anybody for ten minutes.

Q. You relied on Eddie because you knew his brother had confidence in him; is that right? A. I don't get your question.

Q. I said you did business with Eddie because you relied on his brother Frank and had known him, is that correct, previously? A. Yes, I can say that, yes.

Q. At no time did you ever buy or sell whisky to the defendant in this case? A. Buy or sell?

Q. Yes. A. The only one that I remember very pointedly is the last 100 cases that I gave to him personally before I left.

Q. But you never— A. I never had any to sell.

251 Q. You never had any transaction involving the sale of whisky with Frank Costello? A. The sale of whisky, no.

Q. And the transaction involving the trucks which hauled your whisky was a transaction which was handled by Eddie Costello? A. It was handled by Frank. I didn't know Eddie.

Q. The first transaction you had concerning the purchase of the trucks was with Frank. That was in 1920? A. Right, whatever the date was.

Q. But thereafter it was Eddie that ran the trucking business, wasn't it? A. That's true.

The Court: Any further questions?

255 Q. Did the record of your case in the federal court show that you knew Frank Costello? A. Sure.

Q. It did? A. It did.

256 Q. Was there a reference to Mr. Frank Costello in your 1923 case? A. I don't know whether it was Frank or Eddie, I don't know.

Q. Did Eddie Costello testify in that case? A. He did not.

Q. Did Frank Costello testify in that case? A. He did not, no.

Q. Were they defendants in that case? A. They were not.

Q. Did anybody mention their names in that case? A. They did not.

Q. Then how did the records of that 1923 case show that you knew Mr. Frank Costello? A. The prohibition agents that had been working on the case, they had to come in contact with the Costellos because I was connected on the Blackwell's Mansion raid. That was part of the conviction, part of the testimony.

Of course, when that raid was made there were about 20 Costellos arrested at the time and held on bail. I had to bail the whole family out.

257 Q. There were about 20 Costellos arrested at that time? A. Different cousins and so on.

Q. Among the 20 Costellos who were arrested at that time— A. Frank wasn't among them.

Q. Frank wasn't among them? A. No.

Q. Was Eddie among them? A. Eddie was not.

Q. Who were the ones who were among them if you recall? A. I don't know.

Q. Were they brothers or cousins or nephews? A. Cousins.

Q. They were cousins? A. Yes.

Q. And they lived where? A. Around the same neighborhood, Halsey Street.

Q. Frank Costello didn't live near Halsey Street, did he? A. No, he lived in New York.

Q. In New York City. All the rest of them lived around Halsey Street? A. That's right.

Q. And those were the ones who were engaged in this trucking business that you have described for us here? A. I guess so, yes. They must have been. You see, I didn't know them individually.

Q. The Blackwell's Mansion raid took place when? A. At the end of 1922, I think. Even though it was a big thing, I can't pinpoint it as to the date. You have those. That you can get without any trouble.

267 Redirect Examination by Mr. Robson:

Q. Just to clear the record a bit, you were using the Costello trucks to bring your liquor in from Long Island somewhere in the early part of 1921 until you went to prison in— A. Not '21, but 1922 and 1923.

Q. 1921, 1922 and 1923? A. No, just 1922 and 1923.

Q. Those were the years you were using Costello's trucks? A. Yes.

Q. And these trucks were bringing in liquor about once a night, is that correct? A. Almost every night.

Q. And business necessitated, did it not, your communicating with somebody to make arrangements approximately once a day?

Mr. Williams: I don't think counsel should testify in the case.

The Court: It may be leading. Change the form of your question.

268 Q. How frequently did you communicate? A. I may not have communicated, my bookkeeper or the girl in the office may have communicated.

Q. How frequently would you have made arrangements? A. I may have spoken to him once or twice a week.

Q. Once or twice a week over a period of two years? A. Yes.

Q. And you visited their office about once a week, is that correct? A. I guess so, once or twice a month possibly.

Q. Did they ever visit your office? A. Yes, sure.

Q. Both Frank and Eddie? A. No, I would say most of the time Eddie.

Q. Did Frank ever visit your office? A. Yes, he was there a number of times.

Q. How frequently did he visit your office? A. He may have been there in two years a dozen times.

269 Q. With whom were these arrangements made?

A. These arrangements were made with the office. I cannot at this time point at Frank or point at Eddie. They were made with the office, with their office. If Frank was on the wire he got the order. If Eddie was on the wire he got the order.

Q. Were there occasions when Frank Costello was on the wire? A. I can't say yes or no. This is 40 years ago we are talking about. I guess he was.

Q. Can you recall whether you ever spoke to him without recalling a specific occasion? A. I spoke to him many times.

Q. With regard to arrangements? A. Yes.

Q. Can you recall whether you ever made payments to him without regard to any specific occasions? A. That

I wouldn't know, we would send the checks
270 or cash over and whoever was there took it.

Q. That was 405 Lexington Avenue? A. Yes.

307

Louis M. Dillon

called as a witness in behalf of the Government, being first
duly sworn, testified as follows:

Direct Examination by Mr. Robson:

Q. Prior to retirement, by whom were you employed—
the U. S. Government? A. Yes.

Q. In what capacity? A. United States Naturalization
Examiner.

308 Q. From April 1, 1925, to December 1, 1925, to
which office of the Naturalization Service were you
assigned? A. I was assigned to the New York office. Their
headquarters were over here at 154 Nassau Street.

Q. Are you acquainted or familiar with the procedure
which was followed by the New York office during that
period in connection with the processing of applications
for naturalization? A. Yes, sir.

309 Q. What is the first step in the process of an
alien becoming a citizen? A. Well, the initial step
would be the submission of a preliminary application
by the alien prepared by him or by someone in his behalf.

Q. Is that form called the Declaration of Intention?
A. No, Declaration of Intention is a document independent
of the preliminary application for naturalization.

Q. What is the Declaration of Intention? A. That is
commonly called a first paper. That can be taken out at
any time after the alien enters the country.

Q. And isn't that really the first step, the Declaration of
Intention? A. Yes. You must have a declaration that is
at least two years old and not older than seven before you
can proceed with a petition for naturalization at that time.

Q. The next step is to submit a preliminary form; is that correct? A. That is accompanied by the declaration of intention, yes.

Q. And this form is submitted by the alien, did
310 you say? A. Well, the blank form is given to the alien and the information is filled in by him or by someone in his behalf.

Q. I show you Government's Exhibit 7 in evidence and ask you is this the preliminary form to which you refer. Is this an example of one? A. Yes, that is the form that was used at that time.

Q. After this preliminary form was filed by the alien, what was the next step? A. The next step after the preliminary form was received with the declaration, that file was then sent to the port of entry, depending on where he alleged he arrived. If he arrived at Ellis Island, that file would be sent to the port of entry in New York and a certificate of arrival or verification of his legal entry was made and a certificate issued there and then that was attached to the file and sent back to the Naturalization office.

Q. Was that the invariable practice? A. That's right, provided the man arrived after 1906.

Q. Providing he arrived after 1906? A. It was—
311 if he arrived before 1906 he didn't need a certificate of arrival.

Q. If a man arrived prior to 1906 what was the procedure? A. If no verification was required at the legal port of entry, then a notice for examination would be mailed to the alien to appear at the Naturalization office at some particular time, accompanied by two witnesses.

Q. On occasion would the preliminary examination be held simultaneously with the filing of the preliminary form without the intervening period during which a notice was mailed to him? A. No. The alien must appear personally with two witnesses upon appointment and then he is assigned to a preliminary examiner and the official examination takes place then.

Q. Was the procedure ever followed whereby an alien would appear with his two witnesses and with his preliminary form and go through his preliminary examination on the same day? A. That would be very unusual. I don't think so. His file must be assigned a file number before it can go ahead. There must be a file number assigned to the application.

312 Q. You say that would be an unusual practice?
A. Very unusual.

Q. At this preliminary examination what would be done by the examiner? Incidentally, is this the preliminary examination which you say you used to handle? A. That's right.

Q. What was the practice which was followed by the examiner at this preliminary examination? What questions was he required, if he was required, to answer? A. The file would be assigned to the preliminary examiner with the alien and his two witnesses. The examiner would take the file into his room and he would probably review it and then he would call for the petitioner to come in first to be examined.

Q. What would he do when he questioned the petitioner? Was there any set procedure which was followed? A. He would go through the application step by step, based on the information in the application and verify it with the alien, ask him the information in the application, if each allegation was correct. If he says that it is correct as written in the application, a check mark would be made beside each allegation. If any statement was in-

313 correct, then a correction would be made in the preliminary application to conform to the statement of the alien.

Q. I show you again Government's Exhibit 7 in evidence and I ask you whether there is anything on here indicating that that procedure was followed with this particular preliminary form. A. Yes. I noticed that there are red check marks after the allegations in the preliminary form, which indicates to me that the preliminary examiner asked the

alien if that particular information was correct, and if his answer was yes, a check mark was made beside that allegation in the form.

314 Q. In addition to checking the statements on the preliminary form, what if anything else, did the preliminary examiner do or was he required to do? A.

315 In each case there was a—you might term it a history slip, and according to the practice of the Service certain answers made by the alien in connection with his preliminary examination would be recorded by symbols on this history slip, which amounted to a finding.

Q. Do you recall what some of these questions were that were asked of the alien and notations of the answers recorded on this slip? A. Well, the pertinent information in the preliminary form, whether the alien was married and the year of his marriage, whether he had any children, whether he was residing with his wife, whether he had ever been absent from the United States since the date of his original entry, whether he had ever been fined or arrested or convicted of a crime, whether he believed in the form of government which existed in the United States, whether he could read, whether he could write, whether he could speak English well.

364 New York, January 5, 1959,
10:30 o'clock a.m.

381 Frank Kelly

called as a witness by the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Robson:

Q. Mr. Kelly, during the period when Prohibition was in effect, were you at any time engaged in bootlegging activities in one form or another? A. Yes.

Q. And when did you first become involved in such activities?

382 A. Around 1922.

Q. Prior to your becoming involved in bootlegging activities what business if any were you engaged in? A. I was in the garage business.

Q. Will you speak up. A. The garage business.

Q. Were you engaged in the garage business with anybody else? A. My brother.

Q. What was his name? A. Edward.

Q. Would you describe your activities, your bootlegging activities, when you first became involved in bootlegging. Just what did you do? A. I brought liquor in from boats offshore, sold it on the beach. I sold it from the rail offshore.

Q. Speak up a little. A. I sold it offshore, from the rail, and brought some in.

Q. Was this liquor you were importing? A. Yes.

383 Q. Where did you obtain the liquor? Where did you buy it? A. In Europe or St. Pierre, Cuba.

Q. Did you own any boats or ships of your own at any time? A. No.

Q. Did you ever charter any boats? A. Yes.

Q. What sort of boats did you charter and when? A. Schooners, probably 1924 or 1925.

Q. Do you recall a ship by the name of the Vincent A. White? A. Yes.

Q. When did you charter that? A. Some time around 1924 or 1925.

Q. For what purpose were you using that ship? Also for importing whisky? A. Yes.

Q. Where were you getting whisky from at that time? Also from Europe? A. St. Pierre or Cuba.

Q. Approximately how large were the shipments you brought in on the Vincent A. White or these other

schooners? A. I never brought it in. It was off the coast.

384 Q. How much of a load did they carry? A. 2500, 3000, 4000 cases.

Q. What was their capacity? A. Maybe 5000 or 10,000.

Q. Around the years 1924 and 1925 did you have occasion to meet a man by the name of Harry Sausser?

A. Yes.

Q. Would you recognize a picture of Harry Sausser if you saw it? A. I think so.

Q. I show you Government's Exhibit 5 in evidence and ask you if that is the individual you knew as Harry Sausser.

A. Yes.

Q. Mr. Kelly, I show you a duplicate of Government's Exhibit 4 for identification and ask you if you can point out Harry Sausser if he is in that picture. A. I can.

385 Q. Will you tell us where he is standing? A. He is sitting; not standing.

Q. Speak up. A. He is sitting, not standing.

Q. Where is he? Where is he sitting? Will you describe anything about him that will identify him. He is in the second row, the first man.

Q. On the right or on the left? A. On the right as I look at it.

Q. Is there anything about him that signals him out? A. The bald head.

Q. Anything else that you can see? A. That is all.

Mr. Robson: Mr. Williams, will you concede for the record that the individual just identified by this witness is Harry Sausser, that the individual which has just been identified through the testimony of this witness as Harry Sausser is the same individual on Government's Exhibit 4, having the initials H.S. on his right shoulder?

Mr. Williams: All right, so conceded.

Q. When did you first meet Harry Sausser? A. Some time in '25, 1925.

386 Q. You were arrested in 1925 and charged with bootlegging, is that correct? A. Yes, sir.

Q. Do you recall when you were arrested? A. No, sir.

Q. Was it the early part of 1925, the latter part, or the middle part? A. I think it was the early part, though. That would be to the best of my recollection.

Q. If I told you that the record indicated that it was in December, 1925, would that refresh your recollection?

A. If you would tell me it I would believe it.

Q. With relation to your arrest—strike that—at the time you were arrested, you were also indicted shortly thereafter, is that correct? A. I was indicted before.

Q. You were indicted before the arrest? A. Yes.

Q. Who was indicted along with you, do you remember?

A. There were 30 or 40 names.

Q. Was Frank Costello one of them? A. Yes.

387 Q. Now, with relation to your indictment when did you meet Harry Sausser? A. About a month or two or three before that.

Q. A month or two or three months before that? A. Yes.

Q. And did you have occasion to meet him subsequent to your first meeting? A. You mean before that?

Q. No, afterwards. A. I met him once or twice, maybe three or four times after that.

Q. Who first introduced you to Harry Sausser, do you recall? A. A man by the name of Coffey.

Q. Do you recall Coffey's first name? A. Phil.

Q. Where were you introduced to Harry Sausser? A. I believe to the best of my knowledge it was Montauk Point.

Q. Was anybody with Harry Sausser when you were introduced to him? A. There was Mr. Coffey and Frank Costello.

Q. Well, did you know this Frank Costello or meet
388 him prior to that time? A. No.

Q. You had never met him previously? A. No.

Q. Do you see the man that you met then as Frank Costello in the courtroom? A. No.

Q. Will you stand up and look around, please.

(Witness stands in witness box.)

A. Yes.

Q. Would you point him out. A. Over there.

Q. Would you describe where he is sitting. A. The third man at the table.

Q. At this table (indicating defendant's counsel's table)?

A. Yes.

Mr. Robson: May the record show that the witness has identified the defendant, your Honor?

The Court: Yes.

Q. At the time you first met Harry Sausser did you have a conversation with him? A. With Harry Sausser?

Q. Yes. A. Yes.

389 Q. Was Frank Costello present during this conversation? A. To the best of my knowledge, yes.

Q. Will you tell us what that conversation was. A. Mr. Sausser wanted to put some merchandise on my boat offshore, to store it.

Q. What sort of merchandise? A. Liquor.

Q. Do you know how much? A. Not at the moment I don't, no.

Q. Well, approximately how much? A. A couple of thousand cases.

Q. A couple of thousand cases he wanted to put on? A. Yes.

Q. Will you tell us the conversation. A. That was all.

Q. There was no conversation concerning compensation? A. Well, to put it on and whatever I used of it, that would be for the storage on the boat.

Q. I am sorry. Whatever you used of the liquor would be compensation for the storage? A. Yes.

390 Q. Do I understand from that that you were authorized to use that liquor for your own purposes?

A. If I wanted some, yes.

Q. You did in fact agree to have this liquor transferred or placed aboard your boat? A. Yes.

Q. Which boat was it? A. The White.

Q. The Vincent A. White? A. Yes.

Q. That is a schooner that you previously identified? A. Right.

Q. What happened to this liquor when it was placed aboard this schooner? A. It went back to Halifax or Lunenburg, Nova Scotia.

Q. No, I say what happened to the liquor? A. The boat went back with the liquor on.

Q. Was any of it ever unloaded? A. Not to my knowledge, no sir, not to the best of my knowledge.

Q. That is the liquor which you carried at the request of Mr. Sausser? A. Yes.

391 Q. Was any attempt made to your knowledge to unload any of this liquor? A. Some boats went out once or twice, but they never could make contact.

Q. Were you present when these boats went out or when they returned? A. Sometimes I would be, yes, sir.

Q. Who was making the arrangements for these boats to go out? A. Well, I would if I would attempt to get some of my own in.

Q. Was Harry Sausser ever present when these boats went out? A. Probably once or twice.

Q. What about Frank Costello? Was he ever present when these boats went out? A. Maybe once or twice he was, but he was there with Harry Sausser once or twice.

Q. Frank Costello was there with Harry Sausser once or twice? A. Right.

Mr. Robson: I have no further questions of this witness.

The Court: Just to clear up something in my
392 own mind. Was that liquor on the boat when you first saw it or on the land? Where was the liquor? Had it been landed or not?

The Witness: No, it was still out in the ocean.

The Court: Still out in the ocean?

The Witness: On another boat.

The Court: On another boat?

The Witness: The boat was practically empty, and he wanted to put it on my boat to store.

• • • • •
Cross-Examination By Mr. Williams:

Q. In other words, Mr. Kelly, you're talking, if I understand your last response to the Court's question, about whiskey that was out at sea and which was being transferred to the Vincent A. White for shipment to Halifax?

A. No, for storage on the White.

Q. In other words, for storage at sea on the White?

A. Yes.

Q. Was the Vincent A. White at the time more
393 than 12 miles out at sea? A. Yes, sir.

Q. How far out at sea was it? A. A hundred miles.

Q. A hundred miles out at sea? A. Yes.

Q. And the transactions about which you have testified on your direct examination have been concerning the storage of whiskey on the high seas, whiskey which was being removed from one vessel to the Vincent A. White for storage on the high seas, is that correct? A. Yes, sir.

Q. And those are the only transactions about which you have given testimony in response to Mr. Robson's interrogation, is that right? A. Yes, sir.

• • • • •
Redirect Examination By Mr. Robson:

Q. What was to be done with the liquor which was being stored on the Vincent A. White? A. Well,
394 it was to be stored there and Mr. Sausser was to go out and get it if he could and bring it in.

Q. Get it from where? A. From the White.

Q. Where was he to leave it when he was to get it?
A. Well, anywhere that he wanted to send the boat. He

could send it to Rhode Island, Connecticut or Massachusetts, New York, or anywhere.

Q. And bring it back to Massachusetts or New York?

A. Well, wherever he wanted the boat to take it.

395 Q. The arrangements were, as I understand it,
that whiskey was to be transferred from a ship out
at sea to your chartered ship, the Vincent A. White,
396 is that correct? A. Yes.

Q. And it was to be placed on board the White
and stored on there by you? A. Yes.

Q. What was to be done with this whisky after it was
stored on the Vincent A. White? What arrangements
were to be made? A. It was to be stored on there subject
to his withdrawal of it.

Q. What do you mean by "subject to his withdrawal
of it"? A. Well, he could send out and get it if he wanted
it, or whatever he wanted to do with it. It was to be left
right there for his use.

The Court: He could get it any time he wanted
397 to send a boat out for it, is that right?

The Witness: Yes.

The Court: But he did not succeed in getting a boat
and making the contact?

The Witness: To my knowledge, no.

Q. But he did speak about sending some boats out while
you and Costello were present, is that correct? A. I
presume he did. I don't know. I don't know if he did
or didn't.

Q. Didn't you testify that you were present on a couple
of occasions when he did? A. I met him probably on only
one occasion when he was expecting some in, but it never
materialized.

Q. Where were you at the time you met him? A. I
think it was Greenport.

Q. Is that in the United States? A. Yes.

Mr. Robson: No further questions.

Recross-Examination by Mr. Williams:

Q. Mr. Kelly, my recollection of your testimony—and you correct me if I am in error, sir—is that you met Mr. Harry Sausser in 1925; I think you said two or three months prior to your arrest or indictment? A. Yes, sir.

398 Q. And at the time that you met him Mr. Costello was present? A. Yes.

Q. Is that the only time that you had a conversation with Mr. Sausser at which Mr. Costello was present? A. Well, I can't recall now whether he was there at other times that I met Mr. Sausser, but I met Costello a couple of times with Mr. Sausser. What the conversations were I don't know at this time.

Q. Well, you said that you did have a conversation with Mr. Sausser concerning the transfer of some whisky from a vessel on the high seas to the Vincent A. White? A. Yes, sir.

Q. Now, do you know whether Mr. Costello heard that conversation? A. No, I would not know that.

Q. Do you recall whether that conversation took place at a time when he was present? A. I would think so.

Q. Well— A. I think I met Mr. Sausser and Mr. Costello at the same time.

Q. I understood that you met them for the first
399 time at the same time. A. Right.

Q. Now I am asking you about the transfer of whisky. Do you recall whether the defendant in this case was present at that time? A. When the transfer was made?

Q. Yes. A. I don't think anybody was there.

Q. Well, you had a conversation with Sausser concerning the transfer? A. Yes, and I just told him it was all right.

Q. Was the defendant Costello present at that conversation? A. I wouldn't know, sir.

Q. You don't know? A. To the best of my knowledge I don't know. I don't recall.

Q. Well, isn't it a fact that you don't recall any conversation, Mr. Kelly, with Mr. Sausser, concerning the transfer of whisky, at which Costello was present? A. I don't remember now, no, sir. That is 35 years ago.

Mr. Williams: I have no further questions.

400 Redirect Examination by Mr. Robson:

Q. Mr. Kelly, the first time you met Mr. Sausser Mr. Costello was with him, is that correct? A. Yes, sir.

Q. And you had a conversation with Mr. Sausser at that time, did you? A. Yes, sir.

Q. And Mr. Costello was present at that time? A. Yes, sir.

Q. And this meeting was for a specific purpose; or was it just an accidental meeting? A. No, Mr. Coffey asked me would I come down to meet somebody, and I came down to Montauk and met Mr. Sausser.

Q. Was it at the first meeting that you made the arrangements to transfer the whisky? A. The first meeting was when Mr. Sausser asked if he could transfer it.

Q. And Mr. Costello was present at that meeting? A. I believe so, yes.

Recross-Examination by Mr. Williams:

Q. Was he present throughout the whole meeting, Mr. Kelly? A. I don't remember, sir.

401 Q. Are you able to say, Mr. Kelly,—and this is important and I am going to ask you to think back as best you can—are you able to testify that Mr. Costello was present and within hearing at the time you made the arrangement you testified about with Mr. Sausser? A. Oh, I couldn't say, no sir. The first time I met Mr. Sausser Mr. Costello was with him, and he asked me at that time could he transfer some merchandise.

Whether Mr. Costello was in hearing of it, I think it was in an automobile. I don't recall.

Q. Well, are you able to remember your conversation with Sausser on the subject about which Mr. Robson has been heretofore questioning you; namely, the transfer of the whisky, and whether your conversation was heard by Costello? Are you able to say that? A. No.

The Court: Where did the conversation take place?

The Witness: At Montauk Point.

The Court: In the morning or in the evening?

The Witness: To the best of my knowledge I don't remember.

The Court: Where did you meet the defendant? Was it at a bar, or a restaurant, or where you ran into him with Sausser on the first occasion?

402 The Witness: I came to Montauk and I was introduced to him, but where I don't know now.

The Court: You don't know where?

The Witness: No, sir.

By Mr. Robson:

Q. What is your best recollection, however, at this time as to where you all were, or whether you were all together or not when this conversation took place? A. At Montauk Point.

Q. Is it your best recollection that you were all together or not? A. If we were all together?

Q. Yes. A. Yes.

Q. That is your best recollection? A. Yes.

The Court: Did you have any discussion with Mr. Costello about taking any of his merchandise on board the boat?

The Witness: No, sir.

The Court: You did not enter into that conversation with him at all?

The Witness: No, sir.

402-a The Court: All right. How did Mr. Sausser pay you?

The Witness: There was no pay.

The Court: There was no pay!

The Witness: No, sir.

The Court: You did it just as a favor?

The Witness: Yes.

403 Recross-Examination by Mr. Williams:

Q. The last thing Mr. Robson asked you was when you were together. You were together when you met him, is that right? A. Yes.

Q. But you have no recollection as to whether all three of you were together when you conferred with Mr. Sausser concerning the whisky? A. No, sir.

Mr. Williams: That is all I have, your Honor.

Redirect Examination by Mr. Robson:

Q. We may be going back over the same ground, but let us start from the beginning now, Mr. Kelly.

You met Mr. Sausser and Mr. Costello for the first time while they were together, is that correct? A. Yes, sir.

Q. You met them at somebody's request for a specific purpose, is that correct? A. No, I met them not for a specific purpose at the time. They just wanted to ask me to come down there at that time.

Q. You met them pursuant to a specific request, 404 then, is that correct? A. Yes.

Q. And you went down pursuant to this request and you were introduced to Harry Sausser and Frank Costello, is that correct? A. Yes.

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Q. When you arrived there you were introduced to Harry Sausser and Frank Costello, is that correct? A. Yes.

Q. And thereupon something was said, is that right? A. Yes.

Q. What was said when you were introduced? A. Harry Sausser, after we were introduced, asked could he put some stuff on my boat, liquor on my boat.

405 Q. You don't recall exactly where this meeting took place? A. No.

Q. Is this about the first thing that was said when you were introduced to him? A. Well, I suppose there was regular greetings and introductions, and then probably Mr. Coffey said—might have said that Sausser was interested in putting some merchandise on my boat. I don't know; I don't recall any—

Q. This was when you were introduced to Sausser and Costello, is that correct? A. Yes.

Q. Was there any reason for you to believe that Mr. Costello may have walked away after this introduction or is it your recollection that he stayed there after the introduction? A. I don't know. He could have walked away, he could have stayed there; I wouldn't know that. I met the two gentlemen and there it was. I don't know how to answer you otherwise.

Q. What is your best recollection? A. To what, sir? Was he there?

406 Q. Yes. A. When Mr. Sausser asked me?

Q. Yes. A. I would think that we were all together, yes, sir.

Q. Your best recollection is that you were all together? You were all together when you were asked to load this whisky? A. When the question was put to me, I would think so.

Q. Are you certain of that? Is that your best recollection? A. No, I am not certain.

Q. Are you certain that that is your best recollection? A. Yes.

Mr. Robson: No further questions.

Recross-Examination by Mr. Williams:

Q. Do you have a recollection, Mr. Kelly, or are you making a surmise? Do you know what I mean by a surmise?

A. Well, I —

Q. Do you have any recollection of this sir? A. No, sir.

407 Q. You have none? A. No.

Q. What are you doing, giving us your best guess as to what happened? A. Well, I would say yes.

Q. You are giving your best guess? A. Yes.

Q. But you have no recollection of this event of 33 years ago; you are simply giving us a guess as to what happened, is that correct? A. Yes, that's right.

Q. And you have no—

* The Court: Do you recall that there was a day when you met down there at Montauk with Sausser and Costello?

The Witness: Yes.

The Court: You remember that definitely?

The Witness: Yes.

The Court: So that is not a guess. One moment you say it is a guess—

The Witness: Well, as I understand the question, it is a guess.

The Court: Well, you do have a definite recollection that you met Sausser and you met Costello down there at Montauk?

408 The Witness: Yes.

The Court: And you had a discussion down there with reference to taking care of some of his merchandise on your boat?

The Witness: Yes.

Q. But you are not able to say here this morning as to whether Costello was present during the conversation or not, are you? A. Definitely I would not say so, no. I don't remember whether he was there or walked away or went to the toilet or something else.

The Court: I think that is enough. The witness says he was there when they met and he does not know whether he stayed there the whole time or not. I think that is the substance of it.

When did you next see Costello and Sausser again after that?

The Witness: I don't know, sir.

The Court: When did you finally wind up your transaction with Sausser?

The Witness: After the indictment the boat went back and that was the end of it.

409

Harold Kapner

called as a witness by the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Robson:

Q. Mr. Kapner, by whom are you employed? A. By the United States Immigration and Naturalization Service.

Q. Pursuant to instructions of the office of the United States Attorney did you conduct a search of the records of various registrars' offices within the City of New York? A. I did.

Q. And will you tell us what offices you checked and what you checked for and what you found. A. I checked the County Clerks' offices of the Boroughs of Manhattan, Brooklyn, Queens and The Bronx for approximately the years 1920 to 1926 for specific real estate transactions on the part of the defendant.

Q. Did you check for transactions on the part of anybody other than the defendant? A. Yes, a corporation known as the Koslo Realty.

Q. Did you check for both records of conveyances as well as records of mortgages? A. Yes, I did.

Q. Will you tell us what records you found of conveyances first either from or to the defendant Frank Costello during the years 1920 to 1926. A. May I consult my notes?

Q. Yes. A. I found a conveyance from the Halsey Realty Corporation to Frank Costello in the Borough of Queens dated July 7, 1922.

411 Q. Go on. A. This same piece of property was

conveyed on April 24, 1923 by Frank Costello to Loretta B. Costello.

Q. Yes. A. Those were the only conveyances relating to Frank Costello personally that I was able to find.

Q. That is in all the four counties? A. All the four counties. Prior—let me amend that statement—prior to January 1, 1926.

Q. Did you locate any records of any mortgage transactions involving Frank Costello? A. No, none at all.

Q. What about Koslo Realty? A. Excuse me. May I again amend that statement?

When I say no, not at all, I mean again prior to January 1, 1926.

Q. Yes. These questions are all relating from the period 1920 to January 21, 1926. I am sorry. I asked you now what about the records relating to Koslo Realty Corporation. What if anything did you find? A. There is a record relating to a conveyance to Koslo Realty on December 3, 1924 in the Borough of Manhattan from a Samuel Beilin. This property was conveyed from Koslo to 666 West End Avenue Corporation on June 3, 1925.

Those were the only conveyances I could find relating to Koslo prior to January 1, 1926.

Mr. Robson: Will you mark this for identification, please.

(Marked Government's Exhibit 15 for identification.)

Q. Mr. Kapner, would you think back a moment and see whether you can recall any other transactions in 1925 involving Koslo. Do you recall one in The Bronx in August 1925? A. In The Bronx?

Q. Yes. A. Do you mean conveyances or mortgages?

Q. Conveyances. A. Conveyances? Will you bear with me for a few moments?

Mr. Robson: Surely. Will you mark this for identification.

(Marked Government's Exhibits 16, 17 and 18 for identification.)

413 The Witness: Yes, I am sorry.

On September 3, 1925 Koslo was the recipient of a conveyance from Mary C. Newell, and on October 29, 1925 they were the recipient of a conveyance from Clare Building Corporation. Both these conveyances occurred in The Bronx.

Mr. Williams: I am sorry.

The Witness: Both conveyances occurred in The Bronx.

Mr. Robson: Will you mark these for identification.

(Marked Government's Exhibits 19, 20, 21, 22 and 23 for identification.)

Q. Did you find any record of any mortgages given by or to Koslo Realty? A. Yes. On January 9, 1925 Koslo Realty was given a mortgage on the premises at 1802 Andrews Avenue in The Bronx.

Q. Did you find any other record of any transactions?

A. Yes. With reference to the previous conveyances there were mortgages agreed upon between 414 Koslo and 666 West End Avenue Corporation. That was dated June 22, 1925.

On January 6, 1925 there was a mortgage entered into between Massel Realty Corporation and Koslo Realty with reference to the premises 1802 Andrews Avenue in The Bronx.

Cross-Examination By Mr. Williams:

Q. Mr. Kapner, I understand that you searched the records of four counties, Manhattan, Bronx, Queens—and what was the last one? A. Brooklyn.

Q. Brooklyn, for the years 1920 through 1926, is that right? A. Approximately, that's correct, yes.

415 Q. Was it through 1926, Mr. Kapner? A. No, through 1925.

Q. You found, did you not, a certificate of incorporation of the Koslo Realty Corporation in 1924, is that correct?

A. No, sir, I did not. I was not detailed for that particular purpose at this time.

Q. Well, you were looking for transactions of a real estate nature to which the defendant in this case was a party or to which his company was a party, is that right?

A. That's right.

Q. So that you were looking for transactions on which his name appeared or upon which Koslo Realty Company appeared? A. That's right.

Q. When you looked for the transactions of Koslo Realty Company did you first ascertain any of the facts concerning the formation of the corporation? A. No. As I said, not at the present time. That had been done in a prior investigation.

Q. Incident to your examination and investigation concerning the real estate transactions, did you
416 interview Mr. Samuel Beilin? A. With regard to these transactions?

Q. Yes. A. No.

Q. You did not? A. No, not with regard to these transactions.

Q. Did you interview him with respect to the Koslo Realty Company? A. I recollect being present at an interview with Mr. Beilin but I don't think it was in regard to any of the real estate transactions. If my memory serves me, it was in regard to obtaining his evidence in this particular case.

Q. But his evidence related to the real estate transactions, did it not? A. But I do not think we discussed the real estate transactions.

Q. Well, at the time that you went to see him, Mr. Kapner, having conducted an investigation on the real

estate transactions, you knew that he was an associate of the defendant in the Koslo Realty Company, did you not? A. Yes.

Q. And that was the purpose of your visit to him, to ascertain what evidence would be available to you
417 from him or whether he would be able to give you evidence, is that right? A. That's correct.

Q. Now you said that the first document that you found which related to a transaction to which the defendant was a party was a document which was identified as Government's Exhibit No. 15, which purports to be a conveyance of premises at 1729 Montgomery Avenue in The Bronx, is that correct? A. No, that is not correct.

Q. Which was the first one, Mr. Kapner? A. The one on Halsey Street. It was the one just before this one.

Q. They were marked out of order. I will hand you No. 16 then, Mr. Kapner. No. 16 is a conveyance to Frank Costello of premises on Halsey Street, is that right? A. That's right.

Q. Where is Halsey Street? A. In Astoria, Queens.

Q. From whom is that conveyance made? A. By whom?

Q. Yes. A. The Halsey Realty Corporation.

418 Q. And what is the date of that one? A. May 1, 1922.

Q. And I take it that you do not know the purchase price of that because that is not shown in the records. A. No. All that is shown in the records is the amount of internal revenue stamps.

Q. Is the address of the Halsey Street property given on this deed of conveyance? A. Yes, it is.

Q. What is that? A. 957 Boulevard, Long Island City.

Q. 957 Halsey Boulevard? A. No. Boulevard. That was the original name of that street, merely Boulevard.

Q. You say the original name of Halsey Street was Boulevard? A. No, of that particular street where the offices of Halsey Realty were located.

Q. What was the address of the premises which were

conveyed? A. I do not think it is shown on that conveyance.

Q. It is simply described by plot and lot, is that correct? A. That's correct.

Q. Now thereafter on the 11th day of August 1922 there was a further conveyance of these premises from the defendant to his wife, is that correct? A. That's right.

Q. Now the first transaction that you found with respect to the Koslo Realty Company was dated June 22, 1925, is that correct? A. No, that is not correct. The first one was in December of 1924.

Q. Well, you found, did you not, a deed from Samuel Beilin to the Koslo Realty Company dated December 3, 1924? A. Right.

Q. And that was on a building which was on 92nd Street, isn't that so? A. That's right.

Q. That was an apartment building, wasn't it? A. I don't know.

Q. You did not pursue your examination further to find out what kind of a building it was that was conveyed? A. No, sir, I did not.

Q. Now thereafter the Koslo Realty Company conveyed that building to a corporation known as the 666 West End Avenue Corporation, is that correct? A. That's correct.

Q. And that was done on June 23, 1925, is that right? A. Correct.

Q. At the time that this property was conveyed to the corporation known as 666 West End Avenue Corporation, Beilin and Costello were the officers of the Koslo Realty Company, were they not? A. Not to my knowledge.

Q. Well, you had an examination or an interview and the benefit of an interview with Mr. Beilin, did you not? A. Yes, I was present at an interview with him, that's right.

Q. You had the benefits of an interview with him con-

cerning his association with Koslo, didn't you, whether it was in the form of a written memorandum of
 421 someone else's interview or your own presence, did you not? A. That's right.

Q. And so you had the information, did you not, that Mr. Beilin and Mr. Costello were the owners of the Koslo Realty Company at the time that this conveyance was made to 666 West End Avenue Corporation? A. No. As I told you before, Mr. Williams, I do not recollect the context of the interview with Mr. Beilin at which I was present because, as I said previously, I do not think the basic purpose was to inquire into the real estate transactions. It was merely to ascertain whether or not he could appear as a witness.

422 Q. Now, did you locate in your search of these real estate records, Mr. Kapner, a purchase money mortgage running from 666 West End Avenue Corporation to the Koslo Realty Corporation? A. Yes, sir.

Q. What was that date, sir? A. June 22, 1925.

Q. I am talking about the purchase money mortgage. Did you produce that document? A. No.

Q. Well, did you not find in your search of the records, Mr. Kapner, this purchase money mortgage running from 666 West End Avenue Corporation to Koslo Realty Company? A. Well, yes, that is the one I have just testified to.

Mr. Robson: He testified about that.

Q. You don't have a copy? A. I don't have a copy of it.

Mr. Williams: Do you want a copy put in so that the transaction will be completed?

(Mr. Robson hands to clerk.)

(Marked Government's Exhibit 24 for identification.)

423 Q. Now, were you able to ascertain the amount of that purchase money mortgage, Mr. Kapner, from your search of the records? A. I don't have it in my notes,

But if I recollect correctly, it was approximately \$40,000. If I remember correctly, yes.

Q. Now, did you find in your search of the New York County records a document showing a satisfaction of that mortgage running from 666 West End Avenue Corporation to Koslo? A. Well, my notes show that that mortgage was discharged December 24, 1925.

Q. Yes. Did you get a copy of that particular document? A. No, sir, I did not.

Mr. Williams: Do you want that to complete the record of this transaction?

(Mr. Robson hands to clerk.)

(Marked Government's Exhibit 25 for identification.)

Q. Now, all of the documents about which we have been talking the last few minutes were documents which were found in the New York County Recorder's office, is that not so? A. That is right.

424 Q. Now, in the Bronx County Recorder's office you found a conveyance or a record of a conveyance running from Clare Building Corporation to the Koslo Realty Corporation, is that correct? A. Yes, sir.

Q. And that was on two lots in the Bronx, is that correct? A. Yes.

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Q. Now, Mr. Kapner, did you pursue your examination or your investigation concerning those conveyances to ascertain the lots that were involved, the address of the lots?

A. I am sorry, I don't understand your question.

Q. Well, all right, I will rephrase it for you. Did you find out during your investigation of these real estate transactions of the Koslo Realty Company that these lots
425 were on Nelson Avenue in the Bronx? A. Yes, I do know that they were on Nelson Avenue in the Bronx.

Q. Nelson Avenue at what street? A. If I recollect, West 167th, if I am not mistaken.

Q. And did you ascertain that when those lots were purchased there were unfinished apartment houses on the lots which were acquired by the Koslo Realty Corporation?

A. No, sir, I did not.

Q. You didn't find that out? A. No, sir.

Q. Did you ascertain that the Koslo Realty Corporation spent in the year 1925 \$300,000 to complete those apartment houses? A. No, sir, I did not.

Q. Well, have you ever had access, Mr. Kapner, to a memorandum of interview with Mr. Beilin? A. Yes, I have had access to that memorandum.

Q. Yes? A. Yes, I have.

Q. Have you read such a memorandum? A. Not to my recollection.

426 Q. You didn't read it? A. No, sir.

Q. Well, during your examination and investigation into the real estate transactions of the defendant and Koslo Realty Corporation, didn't you attempt to get all the information that you could concerning the real estate transactions? A. This examination and investigation of the real estate transactions was not exclusive with me.

Q. Who else worked on this, Mr. Kapner? A. Mr. Solomon.

Q. Mr. Solomon? A. Yes.

Q. He also worked on the real estate investigation? A. Yes. Mr. Solomon, as I recollect, interviewed Mr. Beilin.

Q. Now, did you ascertain, Mr. Kapner, that the apartment houses which at the time of acquisition by Koslo were unfinished, were in fact completed by them?

427 A. Not as a result of this particular phase of the investigation.

Q. Well, regardless of what phase of the investigation it was; you learned that, didn't you, in your examination of

the real estate facet of this case? You so testified a moment ago? A. That is correct, yes.

Q. Yes. We have already established that you
428 knew, Mr. Kapner, that at the time the Koslo Realty Corporation acquired the lots at 167th Street, that there were unfinished buildings on those lots, is that right? A. That is right.

Q. Now, my question is whether or not your examination and investigation showed whether those buildings were finished by Koslo, were completed by Koslo? A. My investigation did not show it.

Q. Did not? Did you find a record of the sale of those lots by Koslo with improvements? A. No, sir, because that was long after the period of time in which we were interested. My investigation terminated on January 1, 1926, as I testified previously.

Q. So you didn't find any record of the sale of those lots with improvements on July 29, 1926? A. Not in this particular phase of the investigation, no.

Q. Well, regardless of what phase the investigation was in, did you find such a record, Mr. Kapner? A. Would you repeat that question again?

429 Q. Did you find at any time incident to your function in this case a record or records concerning the sale of those lots with improvements by the Koslo Realty Corporation to the RGF Construction Corporation? A. I recollect several years ago during the course of previous investigations that I did find something of a similar nature, and I am hazy as to the exact details.

Q. Now I am going to show you two documents which were in the possession of Mr. Solomon, your associate, and which were just handed to me by Mr. Robson, and which I am going to ask to be marked for identification.

Mr. Williams: Can we continue the same chronology?

Mr. Robson: Yes.

(Marked Government's Exhibits 26 and 27 for identification.)

430 Q. Government's 26 and Government's 27 for identification. I am going to ask you, Mr. Kapner, whether you heretofore saw these conveyances. I hand you now No. 26 for identification and No. 27 for identification. A. Your question is, Mr. Williams, have I ever seen these conveyances?

Q. Yes. A. The answer is yes.

Q. Now, do those conveyances show, Mr. Kapner, that the premises were deeded by Koslo on July 29, 1926, to the RGF Construction Company with improvements on the lots?

• • • • •
434 Q. Yes, that is what I was asking. Do these show that the buildings were on these premises at the time of the conveyance? A. At the time of this conveyance, yes.

Q. And the same thing is shown on the other deed running from Koslo to RGF Construction Corpora-
435 tion, is it not? A. That is correct.

Q. Those have been marked, have they, Mr. Witness, 26 and 27? A. That is right.

Q. Now, you said that you found conveyances from Mary Newell, from Mary or Minnie Newell to the Koslo Realty Company, is that correct? A. That is right.

Q. When were they, sir? A. Mary Newell was September 3, 1925.

Q. Now, where were those premises which were conveyed, Mr. Kapner? A. The location?

Q. Yes. A. I am sorry, I can't tell you that offhand.

Q. It is not reflected in your notes? A. No.

Q. Is it reflected in your notes, Mr. Kapner, what the nature of the real estate which was conveyed was? A. Not in my notes.

Q. Whether they were buildings? A. No, sir.

436 Q. You have no record of that? A. No, sir.

Q. Now, did you find a subsequent transaction from Koslo Realty Corporation to the Rosenbloom Realty Corporation, in which the real estate conveyed by Minnie Newell was subsequently conveyed by Koslo Realty Company? A. No, sir, I did not.

Mr. Williams: Do you have such a document, Mr. Robson?

(Mr. Robson produces document.)

(Marked Government's Exhibit 28 for identification.)

Q. I am going to hand you what has been marked Government's Exhibit 28 for identification and ask you if you, Mr. Kapner, were the investigator who found that transaction? A. Yes. This was obtained several years ago.

Q. By you? A. Yes, sir.

Q. So that you did have some information concerning the transfer of the Mary Newell property by Koslo to Rosenbloom Realty Corporation, is that right? A. As of several years ago, but not in this immediate
437 phase.

Q. Well, I don't want you to departmentalize your knowledge, Mr. Kapner. I am not asking you what you learned with respect to each phase of your investigation; I am asking you about all your knowledge of these transactions.

The Court: Well, you ask him the question.

Q. So you did learn that these properties were sold later? A. Yes, sir.

Q. By Koslo? A. That is correct.

Q. Did you learn that they were the same properties that they acquired in September 1925? A. That is right.

Q. And they were conveyed on what date? A. June 22nd.

438 Q. They were conveyed on June 22, 1926, is that right? A. Yes.

Q. And that is both lots and both buildings, all the real estate acquired from Mary Newell? A. I couldn't answer that question unless I was able to compare it to the original conveyance of Mary Newell.

Mr. Robson: I will concede, your Honor, that the records indicate that the property was subsequently conveyed.

442 Q. Didn't you learn, Mr. Kapner, prior to your going out and looking for Koslo Realty Corporation transactions that Costello had been engaged in the Koslo Realty Company? A. That's right.

443 Q. Now, with respect to the last transaction about which you testified, the Massel Realty Corporation—

Q. What did you find, Mr. Kapner? A. I found a mortgage agreement between Massel Realty Corporation on January 6, 1925 and Koslo Realty concerning premises at 1802 Andrews Avenue in The Bronx.

444 Q. Did you find out the amount of that mortgage? A. No, sir, I don't have it down in my notes.

Q. That was in January 1925? A. That's correct.

Q. Now, did you make any investigation concerning either Babylon Waterfront, Inc. or White Homes Inc.? A. My investigation was conducted several years ago in regard to this case.

Q. And the White Homes Inc.? A. Yes.

Q. Did you find that the defendant was associated with these companies? A. To my recollection he was.

Q. He was an officer? A. I don't recall exactly what the association was.

Q. They were real estate companies, were they? A. They were realty companies.

459 Mr. Robson: Before I start, I thought it might
be a good idea to introduce in evidence some of
these documents, Mr. Williams having no objection, the
record of the real estate transactions.

Mr. Robson: Government's Exhibit 15 for identification
is a deed between Frank Costello to Loretta Costello,
460 premises on Halsey Street in Astoria.

Government's Exhibit 16 for identification is a deed
from Halsey Realty Company to Frank Costello of the
same premises in Halsey Street, Astoria that is covered
by Exhibit 15.

Exhibit 17 is a deed from Koslo Realty Company Inc. to
666 West End Avenue Corporation covering property on
92nd Street and West End Avenue.

Government's Exhibit 18 is a deed from Samuel and
Anna Beilin to Koslo Realty on December 1, 1924, covering
property on West End Avenue and 92nd Street.

Exhibit 19 is a deed dated August 12, 1925 conveying
from Mary C. Newell to Koslo Realty property of the
Coster estate located in The Bronx.

Exhibit 20 is a deed from Minnie R. Newell dated August
12, 1925 conveying adjoining piece of property from the
Coster estate to Koslo Realty.

Exhibit 21 is a deed from the Clare Building Corporation
to Koslo dated October 26, 1925, conveying property on
Nelson Avenue in The Bronx.

Exhibit 22 is another deed dated October 26, 1925 from
Clare Building to Koslo Realty Corporation also on Nelson
Avenue in The Bronx.

Exhibit 23 is a certificate of incorporation of Koslo
Realty Company Inc., indicating its filing on De-
461 cember 2, 1924.

Exhibit 24 is a mortgage dated June 22, 1925 from
the 666 West End Avenue Corporation to the Koslo Realty
Corporation covering parcel on West End Avenue.

Exhibit 25 is a satisfaction of the mortgage from 606 West End Avenue Corporation to Koslo Realty dated December 24, 1925.

That is all.

The Court: Received in evidence, Exhibits 15 to 25.

463 Mr. Robson: This is a deed of Loretta Costello to premises 1802 Andrews Avenue, indicating that she resides at that address.

464 The Court: All right. Received in evidence as Government's Exhibit 29.

Mr. Williams: Your Honor, in the light of the colloquy we just had about defense exhibits, I would like to offer as defense exhibits what have heretofore been identified as Government's Exhibits Nos. 26, 27, and 28. May they be marked as defense exhibits A, B, C?

Conveyance from Koslo Realty to R.G.B. Construction Company is Defendant's Exhibit A; conveyance from Koslo Realty to R.G.B. Construction Company is Defendant's Exhibit B. That is another piece of property between the same parties. Exhibit 28, which now becomes Defendant's Exhibit C, is a conveyance from Mary Newell to Koslo— from Koslo Construction Corporation to Rosenbloom Realty Company.

And in order, your Honor, to complete the record on these transactions, I just asked Mr. Robson if I might offer at this point as D and E the two certificates of incorporation on Babylon Waterfront Inc. and White Homes Inc., if he has no objection.

465 (Government's Exhibit 26 for identification marked Defendant's Exhibit A in evidence.)

(Government's Exhibit 27 for identification marked Defendant's Exhibit B in evidence.)

(Government's Exhibit 28 for identification marked Defendant's Exhibit C in evidence.)

(Two certificates of incorporation marked Defendant's Exhibits D and E in evidence.)

Mr. Robson: At this time I would like to offer into evidence to the extent that I shall read from it and to the extent that Mr. Williams will read from it a deposition taken on December 30, 1958 of a Miss Helen L. Sausser. This was taken pursuant to notice and was attended by a representative of Mr. Williams.

466 Mr. Robson: On page 1:

"Q. Where and when were you born, Miss Sausser?

"A. I was born in Mimico, Ontario in 1907, October 10th.

"Q. And what was your father's name?

"A. Harry C. Sausser.

"Q. Now, after your birth, for how long did you continue living in Ontario, do you recall?

"A. Oh, three years—three or four years.

"Q. And where did you move to then?

"A. We moved to Detroit.

"Q. And how long did you live in Detroit?

"A. Oh, I lived there until I was around 12 years old.

"Q. That would be 1919?

467 "A. Right, yes.

"Q. Was your father employed while you lived in Detroit?

"A. Yes, he worked for the railroads.

"Q. Do you know what railroad he worked for?

"A. Oh, there was the Wabash, the Michigan Central, the Grand Trunk. I don't remember the Pere Marquette or not, but at that time it went in there.

"Q. What sort of work did he do?

"A. He was a yard master."

Page 2.

"Q. And where did you go when you left Detroit?

"A. We went to Florida. Jacksonville and then Miami.

"Q. How long did you remain in Florida?

"A. Oh, we went down in January, and my mother and I returned to New York City in April.

"Q. What year was that—1920?

"A. That would be 1920.

"Q. While you were living in Florida was your father employed?

"A. No."

Page 3:

"Q. And then where did you live?

468 "A. Well, we moved from there, and we had a furnished apartment on West 71st Street between Broadway and Columbus.

"Q. How long did you stay at that furnished apartment?

"A. Oh, we must have been there almost a year, I guess.

"Q. During that year was your father employed?

"A. Well, he was doing something, but he wasn't employed by the Government.

"Q. Do you know what he was doing?

"A. Well, from what I heard mentioned, he was apparently in the bootlegging business."

469 "Q. When you say 'from what you heard mentioned' from whom did you hear this mentioned?

"A. Well, at that time he had been associated with a man by the name of McCord from Detroit—John McCord.

"Q. And were these conversations that you heard between your father and McCord that you are referring to when you say 'from what you heard'?

"A. Yes,"

473 "Q. Now, after you left the furnished apartment where did you live?

"A. We bought a house on North Broadway in White Plains.

"Q. And how long did you remain there?

"A. Oh, let's see. About three years, I would say—three years.

"Q. Was your father employed during that three-year period?

"A. No.

"Q. Do you know what he was doing for a living?

"A. He was still associated with John McCord and in the bootlegging business."

475 Mr. Robson: On page 4:

"Q. Did you ever have occasion to travel anywhere with your father while you were living in White Plains?

"A. Yes, we used to—if I wasn't going to school, why, I sometimes—my mother and I, and John McCord and his wife, we would go up to Montreal, and usually drove to Montreal. I can remember several occasions being there.

"Q. Were these purely social trips?

"A. No, they were apparently from a business angle.

"Q. And what sort of business?

"A. Well, as I recall, there was always whiskey or bootlegging connected with it.

476 "Q. And can you recall in what way whiskey was involved in these trips?

"A. Well, because of years of association with the railroad my father had a way of being able to get cars across the border. They were apparently—the whiskey or whatever—whiskey or wine, whatever it was—was purchased in Canada and then brought across to the States.

"Q. And your father was making arrangements for these shipments?

"A. Yes, that's right.

"Q. Now, you stayed in White Plains then until June in 1923?

"A. Yes, I would say around 1923.

"Q. And then where did you go, or where did you live?

"A. Well, we moved to Freeport. We stayed in Freeport, Long Island, and we stayed in a house that had been rented by the McCords. We sold our place.

"Q. And how long did you remain in that house which was rented by the McCords?

"A. Oh, I don't know—probably three or four months maybe, it seems to me. It might have been longer.

477 "Q. And were your father's activities during that three or four months the same as they had been prior to your moving there?

"A. Yes. Yes, it was the same idea, but he was having a little trouble with this John McCord. He was a little hard to get along with to the extent that he had become quite a drinker, and he was just not reasonable, and he was having a little trouble with him."

Mr. Robson: At the bottom of page 5:

"Q. Where did you live after you left this house in Long Island in Freeport?

"A. Well, we moved back to—was it? Let's see. I can't remember whether—I think we went back to 72nd Street in a small furnished apartment there.

"Q. And how long did you live at that address?

"A. Just a few months—not very long.

"Q. And then where did you move to?

"A. Then we moved into a house that was out on Long Island.

"Q. Do you remember where that was?

"A. Commack was the name of the place.

"Q. Is that Commack?

"A. Yes.

478 "Q. How long did you live in Commack?

"A. Oh, a year or so.

"Q. This would have been from when—about the latter part of 1924?"

Mr. Robson: Then there was an objection by Mr. Fuller: "Let's not lead."

Mr. Robson: Now page 7:

"Q. Well, roughly, what was the period during which you lived in Commack?"

"A. We were there in the Summer, and we were there in the Winter time.

"Q. Of what year?"

"A. It was in 1924, I think.

"Q. And were you there during any part of 1925?"

"A. Well, let's see. It would have been starting in 1925, I would say.

"Q. Well, let me ask you this. Do you recall your father having been arrested and indicted for bootlegging?"

"A. I didn't know anything about it. I had heard about it, and I think it was in the papers, but I mean—

"Q. Well, do you recall when that was?"

"A. (No response.)

479 "Q. Do you recall with relation to this arrest and indictment that you had heard about or was in the papers—do you recall your residence in Commack in relation to that?"

"A. Yes, I do. I remember one instance where he came home—he had been gone all night, and he came home and changed his clothes, and left the house, and said at the time that he had to go into New York City, and he had to go to court. Now, that could have been the time he had to appear in court.

"Q. So that you were living in Commack at the time that he was under indictment, is that right?"

"A. Yes, I would say so. I know we lived in Commack at the time that this incident happened because it was on the estate on Long Island where they had had the trouble.

"Q. If the record showed that indictment was obtained

in January, 1926, would that refresh your recollection about approximately the time you were living in Commack?

"A. Well, I am not sure on that date because it seems to me it was earlier than that.

"Q. Do you know Frank Costello?

"A. Yes, I have seen him and I have been in his company.

480 "Q. When did you first meet him, do you recall?

"A. Well, that was during the period that we lived in Commack.

"Q. Was it during the early part of the period that you lived there?

"A. Yes.

"Q. Miss Sausser, I would like you to look at a duplicate of the Government's Exhibit 4 for identification dated December 11th, 1958, In The United States District Court, Southern District of New York, and ask you if you can identify the man you knew as Frank Costello on that picture?

"A. Yes, this man over here in the upper righthand corner (indicating on exhibit)."

Mr. Robson: May we have a concession that the witness has identified Frank Costello as appearing in the upper righthand corner of Government's Exhibit 4?

Mr. Williams: Yes.

Mr. Robson: Now at page 9:

"A. Yes. And that is my father.

"Q. That is right in front of—

481 "A. Bobbie.

"Q. He was seated right in front of your father?

"A. That's right. This is my mother (indicating)."

Mr. Robson: May we have a concession that the witness has identified her father as the gentleman appearing in this photograph, Government's Exhibit 4 in evidence, she having identified that gentleman as her father?

Mr. Williams: Yes.

Mr. Robson: Mr. Williams so concedes.

On page 10:

"Q. On how many occasions did you see Frank Costello approximately?

"A. Well, when we lived in Commack there was two or three weekends that they had sort of a gathering at our place. It was a very large house, and the men would come out—the men and their wives and so forth—would come out and they would play cards. Frank was usually there. In fact, I guess the two or three times I can recall, he definitely was there. I think probably it was a social time more or less, being as far as the men were concerned they spent most of the time playing cards.

.

484 "Q. Outside of these social get-togethers, did you ever see or meet Frank Costello at your house?

"A. Not that I can recall. We went to Frank Costello's house when we were in Bayside, and he lived in Bayside at the time.

"Q. When was this?

"A. That must have been the latter part of 1925. My father died in 1926. And it was in 1925—along in 1925.

"Q. By the way, do you know when your father met Costello for the first time, approximately?

"A. No, I really don't. It must have been during that period just before we moved to Commack because financially things seemed to have gotten better as far as we were concerned. I mean, our own family."

.

485 Mr. Robson: On page 11:

"Q. Had you ever heard your father mention Frank Costello, or had you ever met Frank Costello or heard of him from your father prior to this period shortly before you moved to Commack?

"A. No, because I definitely did know Frank came into the picture in Commack. I mean, that was the first I was aware of Frank Costello.

"Q. Now, did you ever have occasion to go to any office which your father used or Frank Costello used?

"A. Yes. I used to, when I lived in Commack—I used to go into New York. Being at the age I was then I liked to go to New York and shop. And sometimes we
486 would go to a matinee in the afternoon. And maybe when I would decide to do it my father just didn't have all the money I thought I should have for this escapade or this afternoon's entertainment, and he would say, 'Why don't you stop up at the office? I will give you money then after you get into New York.'

"Q. Where was this office?

"A. It was in the Long Beach Building, and it is on Madison Avenue, isn't it?

"Q. Madison or Lexington?

"A. I don't know. I have got to think of the streets. Lexington.

"Q. What street on Lexington?

"A. Well, right there I can't say definitely, but I know it was near or around the Roosevelt and the Commodore. Those hotels were right around it somewhere, but I can't tell you the number of the street.

"Q. Do you remember the address, by any chance?

"A. No.

"Q. Was it near 42nd Street, do you remember?

"A. Yes, it was near 42nd Street.

"Q. Did you ever see anybody else up in this office besides your father?

487 "A. I saw—well, this Bob Ellis. He was sort of a bookkeeper or something like that. Quite often he gave me the money."

489 The Court: Continue with your reading.

Mr. Robson: The rest of the answer is:

"I don't remember seeing—or I could have seen other people. I saw that Bill Bleek there and—as to having seen Frank, I can't remember. He was probably there, but I just actually don't recall it."

"Q. How did you know that your father was in the same business with Costello and they were using the same office?

"A. Well, I had heard him make remarks at home that he would see Frank in the office, or maybe he was talking to him on the phone and he was going to see Frank at the office. And that I do remember definitely. So I mean, as I recall now, definitely Frank was there. He must have been there."

Mr. Williams: I object to that, your Honor, as
490 being clearly hearsay, what her father told her at home about having seen the defendant at the office.

491 The Court: I say I am going to allow that to stand. That is not hearsay, and I deny your motion to strike.

Mr. Robson: This is on page 13:

"Q. Do you recall any conversations which indicated the nature of the business—"

Mr. Robson: There was an objection there by Mr. Fuller or an interruption by him, and I then added to the question:

"Q. At any time, I am talking about now—when I say 'recall' now, I am not referring necessarily to a specific conversation?

"A. Well, yes. I certainly—I mean, I definitely knew they were in the bootlegging business. Somewhere along the line I must have heard a conversation. And besides

things that had happened around this house in
 492 Commack. I mean, I had seen instances where there
 had been liquor, and Frank was associated with it,
 and so was my father."

497 "Q. What sort of instances, generally, if you can
 recall any specific ones—fine—if not, generally what
 sort of instances are you referring to?

"A. Well, I mean that was the one case that they brought
 some trucks in—large trucks—and these trucks had large
 aluminum cans on them. And those cans, which I found
 out later on, were removed from the trucks and stored in
 the barn that we had there, which actually was a barn
 but actually we used it for a garage for our car. And it
 was a large edifice, and these cans were stored in that
 barn. They had no labels on them. They were metal cans.
 But it was during a very cold period, and the next morning
 when we wanted to use our car, why, it was frozen up.
 So it was sort of a laugh about the house that the car
 should be frozen up when we had so much alcohol on the
 premises. Now, it was eventually—the car was
 498 thawed out, and some of that alcohol was put in
 the car. From that I know definitely that in those
 cans apparently was alcohol.

"Q. How did you associate Frank Costello with that
 shipment?"

"A. Well, there was a driver—I don't imagine he was
 a truck driver for Frank. But he was a large Italian man,
 And they stayed at the house. And he definitely mentioned
 Frank several times and working for Frank. So I mean,
 I knew that he worked for Frank, and from that and the
 contents of the cans, why, it just certainly must have been
 more or less bootlegging that they were in, and that is
 what was in the cans. And this person's name—
 499 his last name I am not sure of any more, but his

first name—he was called Tony which is a very common name with the Italian people. But by the same token, that is what his name was.”

.

“Q. Does the name Malillo refresh your recollection?

“A. Malillo strikes, I think—I am not sure of the pronunciation—but it does sound that way to me. As I recall, it was Malillo.

“Q. Would you recognize a picture if you saw it?

“A. Yes, I could recognize a picture.

“Q. Did you ever see this Tony in the company of Frank Costello?

“A. Not that I recall.

“Government’s Exhibit 1 marked for identification.

“Q. Would you look at Government’s Exhibit 1 for identification. Is that picture familiar?

“A. Yes. That is the man that I knew as Tony.”

.

501 Mr. Williams: My objection, your Honor, is that the whole answer is predicated upon information which she received from a man named Tony, and, therefore, is obviously hearsay.

.

502 The Court: Your objection is overruled and your motion to strike is denied.

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504 Mr. Robson: Page 16:

“Q. Were there any conversations, without you being able to recall any personally—were there any conversations?

“A. Well, there must have been conversations, definitely, because I mean, I knew that was what they were doing. And it was my father and Frank Costello.

“Q. Do you recall generally what the subject of these conversations were?”

505 Then Mr. Fuller objected and said:

"Mr. Fuller: I object now because she said she doesn't remember any conversations. She said there must have been some, but she doesn't remember there being any.

✓ "Q. Miss Sausser, I realize, of course, that we are going back more than thirty years, and I am not asking you to try to recall any specific conversations. But I am asking whether you can recall generally that there were conversations or that there were not conversations?

"A. Well, there were conversations. Let's put it that way. There were conversations.

"Q. Do you recall what the general nature of the conversations was without recalling? If not—if you can't recall what the specific content of them was?

"A. Well, they would talk about whether buying this type of whiskey was the right thing, and how much it was going to cost, or some place else where they could locate another type, and maybe that would be better but cheaper, and would move faster. That sort of thing—I heard that.

"Q. Over what period of time was this?

"A. Well, this was during the time that I lived in Commack, and also we had lived—later from Commack we lived in Bayside. And that was the latter
506 part of 1925.

"Q. Did these conversations take place at various periods during that entire time?

"A. Oh, yes. Yes, from any time during the period we lived in Commack, and then after we moved from Commack we went to Bayside. Frank owned a house in Bayside, and we used to go over there once in a while—maybe a Sunday dinner or something like that. There would be my mother and father, and Frank and Bobbie, and myself.

"Q. Incidentally, this picture, Government's Exhibit 4—do you know where that was taken?

"A. Yes, that was taken in Commack."

Mr. Williams: Your Honor, at this point I do not want to interrupt Mr. Robson reading that colloquy concerning the conversation, but I object to the conversation where she purports to testify, because when he was reading Mr. Robson omitted one question and answer which I think is necessary to a full understanding of the witness' testimony in this deposition. That question appears at page 16 of the deposition.

At page 16 of the deposition—page 15, I am sorry—

The Court: Yes, there was this question and
507 answer which was not read by Mr. Robson:

"Q. Now, I was asking you again about conversations. Getting back into the conversations between your father and Frank Costello, do you recall an incident—let me say, do you recall any other incidents generally describing him, or any other conversations which in any way related to whiskey?

"A. Well, later on after—I can't at this point remember any incidents. I mean, it was just generally known. And I knew it. I still was fairly young, and I wasn't particularly, shall we say, too curious because I didn't like the business in the first place, and I didn't want to be—I mean, I just didn't sort of want to associate with it."

Mr. Williams: And then I object to all these conversations which are further predicated—

The Court: You object to the last statement?

Mr. Williams: I am objecting, your Honor, to all of the conversations on the basis, number one, that she has testified that she has no recollection of any conversation. Then she says at page 16, in response to a question where Mr. Robson questions her about it again, and where she says:

508 "A. Well, there must have been conversations, definitely, because I mean, I knew that was what they were doing. And it was my father and Frank Costello."

You see, your Honor, her testimony I am afraid, like the testimony of a witness that came here this morning, is based upon something that they think must have happened, or what she has now been convinced had happened and she feels must have happened. Then she goes on and gives testimony based on that erroneous assumption, the entire effect of which is speculative as to what must have happened in 1924, 34 years ago, and she then gives instances about conversations in substance without recalling any specific conversation, and there has been no evidence whatever to show that there was any connection with the defendant, only she thinks that there must have been some.

Now, your Honor, I think that goes more than to the weight of the evidence; I think it goes more to the probative value of the evidence. I think this is nothing more or less than speculation about the events three and a half decades ago, when her recollection is absolutely blank.

Now, I don't think that kind of evidence ought to be permitted in a denaturalization case which the Government is trying, and where the Supreme Court has
509 time and again said that the evidence must be clear, unequivocal and convincing.

• • • • •
510 The Court: I have certain theories in connection with the deposition of this woman, and in some of these instances I think the woman was making a proper comment on the basis of the conversations that she heard.

Now, after all, she did remember that there were conversations; she did remember the general subject that was discussed, and on the basis of that I think that the woman might very well have said that she knew that there were such conversations. Those men would be around there and she would be sitting around, and they would not be just sitting there just blank. Certainly there were conversations. She said that she can't remem-

her the precise conversations, and that is a perfectly normal thing for a woman to say after thirty-five years. I overrule your objection.

Mr. Robson: Page 17:

"Q. Now, during the period that you—well, from 1919 when you left Detroit, until your father's death, was your father ever engaged in the real estate business in any way?

511 "A. Well, not actually. This office that they had on Lexington Avenue was supposedly a real estate office.

"Q. When you say 'was supposedly a real estate office' what do you mean?

"A. I mean by that they were using that as a front—as a cover-up. Actually, I don't think they ever did any real estate business whatsoever.

"Q. Did your father ever engage in the real estate business, to your knowledge?

"A. No.

"Q. Did you ever hear any mention by him of any real estate business?

"A. No.

"Q. Did you ever hear Frank Costello ever mention any real estate activity?

"A. No.

"Q. Now, your father is dead, is he not?

"A. Yes, he is.

"Q. When did he die, do you recall?

"A. In 1926."

Then we had Government's Exhibit 2 marked for identification, your Honor.

512 "Q. Miss Sausser, would you look at Government's Exhibit 2 for identification, the second sheet—the first is merely a certification—and tell me whether the individual described in that certification is your

father—or the information there appears to relate to your father.

"A. Yes.

"Q. Is all that information accurate insofar as your father's history is concerned?

"A. Yes, I would say so.

"Q. Now, your father died where?

"A. Windsor.

"Q. In Windsor, Ontario?

"A. Ontario."

514 "Q. And how long had he been in Windsor, Ontario when he died?

"A. Oh, I would say probably ten hours or so.

"Q. Ten hours?

"A. Yes.

"Q. Were you with him when he died?

"A. No, I wasn't.

"Q. You were not in Ontario at the time?

"A. No.

"Q. Do you know where your father had been prior to his arrival in Windsor, Ontario?

"A. Yes, he had been up in Nova Scotia.

"Q. And how long had he been up there?

"A. Oh, three or four months.

"Q. And prior to that three or four months period in Nova Scotia, where had he been?

"A. Well, that I don't actually know—where he was in that period. He was supposed to have been going to go to Europe in a boat."

Page 20:

"Q. Are you familiar with your father's signature?

"A. Yes, I am.

515 "Q. I show you Government's Exhibit 9 for identification dated December 11, 1958, United States District Court for the Southern District of

New York, and I ask you whether that is your father's signature on the bottom of the page.

"A. Yes, it is.

"Q. Before I ask you about that, did you have occasion to see your father in Canada at any time before he died?

"A. Yes.

"Q. Where was that?

"A. Mahone Bay.

"Q. Was that in Nova Scotia?

"A. Yes. It was a little way from Halifax.

"Q. Was anybody else there besides you and your mother?

"A. Yes, this Tony Malillo.

"Q. He was up there?

"A. Yes.

"Q. Had he been with your father when you arrived, or did he come ~~Ap~~?

"A. He came afterwards.

"Q. I show you Government's Exhibit 33 for identification and ask you if you can tell us what that is.

516 "A. This was a telegram that was sent to my mother after my father had died, and of which nothing ever came. Nothing ever came of it.

"Q. I notice this is signed 'Frank.' Do you know who that Frank is?

"A. —"

Mr. Williams: I object to the ensuing questions and answers, your Honor, but I suppose you will have to hear them before you rule.

Mr. Robson: (Reading)

"A. Frank Costello.

"Q. How do you know that that was signed by Frank Costello?

"A. Well, I would say definitely it is Frank Costello because in the beginning it mentions 'All the boys. All of the boys wiring you money.'

"Q. Did you have occasion to ever see Frank Costello again after your father's death?

"A. No, never.

"Q. Did he ever communicate with you?

"A. No.

"Q. Did you ever communicate with him?

"A. No."

518 Mr. Williams: I will agree that the objection I have just made is without merit if there appears on the wire what Mr. Robson had just stated, namely, that the White Homes Inc. telephone number is there as the telephone number of the sender.

Mr. Robson: It says "Telephone me at that number."

The Court: It says "Telephone Republic 4164 on arrival in New York."

Mr. Williams: I will withdraw my objection to the wire.

519 "Q. Just one or two more questions, Miss Sausser. Do you recall ever having been to a home or garage in Astoria, Long Island?

"A. Yes, I went down there with my father. As I understood at the time—as I recall later—there was a brother of Frank Costello's that owned that place, or had rented it. There was a house, and in back of the house there was a large—again a place that looked like a large garage or barn. Storage place, I would say.

"Q. Do you recall what the occasion was of your visit or your father's visit?

"A. No. He must have had some business to see with this man involved at the time. What it was I don't know.

"Q. Did you have occasion to go into the garage?

"A. No, I didn't go into the garage."

At this time I concluded my direct examination. The cross-examination began. I suggest that possibly the simplest way to handle it is for Mr. Williams to read what

he wants of the cross-examination and I will then read whatever questions on redirect I want to read.

520 Mr. Williams: (Reading)

"Q. Miss Sausser, you indicated that you lived in New York City in 1920, I believe?

"A. Yes, that is correct.

"Q. And you said that your father was acquainted with a John McCord?

"A. That's right.

"Q. Were you ever present at the time when Mr. McCord and your father had any conversations?

"A. Yes.

"Q. And it is from these conversations that you concluded that your father was engaged in bootlegging?

"A. That's right.

"Q. Did you ever ask your father if he was engaged in bootlegging?

"A. No.

"Q. Were you ever present when your mother asked him if he was engaged in bootlegging?

"A. Yes.

"Q. Did he admit he was engaged in bootlegging?

"A. Yes.

"Q. He did?

"A. Yes.

521 "Q. Do you recall in July of 1956 when you were met and interviewed by Mr. Gorman?

"A. Yes.

"Q. Isn't it a fact that at the time of that interview you indicated when you inquired of your father what occupation he was in—you told Mr. Gorman you really didn't know, and that your father would never indicate to you what occupation he was in?

"A. That was to me. He didn't indicate to me.

"Q. Isn't it also true that the same holds true to your mother's questions?

"A. Well, no. He talked to my mother at a different place than he talked to me.

"Q. So when you told Mr. Gorman that whenever you asked questions you got evasive answers—

"A. (Interrupting) That's right.

"Q. This is not related to your conversations, but somebody else's?

"A. I don't understand that exactly.

"Q. That whenever you asked your father what his occupation was, that you received evasive answers?

"A. Yes, that's right.

"Q. Now, were these conversations which you had or someone else had?

522 "A. When I asked my father he evaded answering the question. But if my mother asked him he didn't evade the question.

"Q. So you did ask him and he didn't tell you?

"A. He didn't tell me. He told my mother.

"Q. But he didn't want to tell you what he was doing?

"A. That's right.

"Q. You indicated that your family and the McCord family would on occasion drive to Montreal?

"A. That's right.

"Q. You further indicated that these were business matters?

"A. That's right.

"Q. Were you present at any time in Montreal when business was conducted by your father?

"A. No.

"Q. How do you conclude it was business?

"A. Because it was talked over in hotel rooms afterwards.

"Q. Were you present during all these periods?

"A. Not all the periods, but I certainly was around.

"Q. How old were you at that time?

"A. Oh, around thirteen.

523 "Q. Thirteen years old?

"A. Yes.

"Q. And you recall that at page thirteen—you recall conversations now that took place when you were thirteen years old—is that correct?

"A. That's right.

"Q. Miss Sausser, were you ever interviewed at a prior time by any representative from the Government relative to this matter?

"A. Yes.

"Q. And did you ever give the Government a statement?

"A. Yes.

"Q. And did you sign the statement?

"A. Yes.

"Q. Do you have any brothers or sisters?

"A. I have a half brother. I have a stepsister and a stepbrother.

"Q. How old is your half brother?

"A. My half brother is sixty-two years old.

"Q. What is his name?

"A. Latham.

"Q. Is he a child by your mother or by your father?

"A. He is a child by my mother.

524 "Q. So was your mother married previous to the time she married Mr. Sausser?

"A. Yes, my mother was. But her name was not Latham. He was adopted.

"Q. Do you know when your parents were married?

"A. Well, I was born in 1907. I don't know the year, no. I would have to figure it out. I can do it that way, if you want me to."

• • • • •
"Q. You mentioned before that you were present when conversations were conducted between your father and Frank Costello; is that correct?

"A. Yes.

"Q. But you do not recall specifically the substance of any one conversation?

"A. That's right.

525 "Q. Were you in the same room when these people were discussing this matter?

"A. Yes.

"Q. You were?

"A. Yes.

"Q. And how old were you at that time?

"A. Oh, somewhere around seventeen.

"Q. Had you graduated from high school?

"A. When I went to school we didn't graduate from high school.

"Q. Isn't it a fact that when you were interviewed by Mr. Solomon in March of 1953 you indicated that you did overhear conversations, but that you were usually sent into another room when your father was talking with Mr. Costello?

"A. Yes, they would start, and then he would say, 'Why don't you go in the other room?' or something like that.

"Q. And you would go in the other room and listen to what was being said then?

"A. Well, probably.

"Q. Did you know Ed Costello?

"A. That was the party that we went to visit in Astoria.

526 "Q. Is that the only time you ever met him?

"A. Yes, to my recollection.

"Q. I understood that the only time you ever heard any conversations between Mr. Costello and your father was during the period you were living in Commack, is that right?

"A. That's right.

"Q. Then you also indicated that you recalled Frank Costello being there only on one or two occasions?

"A. That's right.

"Q. So you really didn't hear very many conversations?

"A. No.

"Q. Perhaps one or two?

"A. Yes.

"Q. Or one?

"A. No.

"Q. One or two?

"A. Two.

"Q. Two conversations? And how long did these conversations last?

"A. Well, they could have been any length of time. I don't recall that.

527 "Q. You indicated that you did not know your father was in the real estate business?

"A. I what?

"Q. You did not know your father was engaged in any real estate business?

"A. To the best of my knowledge, he was not.

"Q. You don't know that he was not engaged in any real estate business, however?

"A. He was not.

"Q. Do you know that he was not?

"A. Yes.

"Q. How do you know that he was not?

"A. Because there was never any real estate transactions or anything like that ever mentioned. And certainly it would have been mentioned.

"Q. Well, how often were you in the office at the Long Beach building?

"A. Well, I would say three or four times."

528 "Q. So you don't really know what went on in the office there, and you cannot say on the basis of your three or four appearances that real estate transactions were not being conducted?

"A. From the appearance of the office I would say definitely there were no real estate transactions being held.

"Q. What do you mean by that?

"A. Well, ordinarily they don't sit around with their feet on the desk reading the newspaper, and that sort of thing. And talking over race horses and bootlegging

and that sort of thing. I mean, they just don't do that, that's all.

"Q. I thought you indicated you didn't hear any conversations in the Long Beach building relative to bootlegging?

"A. Well, as young as I was I still knew what 529 a racing form looked like, and that sort of thing which they had around there.

"Q. Didn't you testify a moment ago you didn't hear any conversations at the office?

"A. About bootlegging. Naturally, they would be talking about something.

"Q. You don't know they were doing bootlegging from that office—that is all I am saying?

"A. I would say yes, definitely.

"Q. How do you know that?

"A. It is just understood that he had to have a place of business.

"Q. How do you know this was not a real estate office, is all I am asking you?

"A. Because there were never any real estate transactions going on.

"Q. Were you ever there where you would have an opportunity to observe these real estate transactions?

"A. No, but it certainly seems to me you would realize, or you would hear some conversation about it.

"Q. And you were over there three or four times, and the three or four times you were there you didn't hear real estate discussed, and you didn't hear any bootlegging discussed, isn't that correct?

530 "A. That's right.

"Q. You didn't hear any conversation?

"A. They talked about something.

"Q. But you don't recall what it was?

"A. No.

"Q. You had no basis to say that they were not involved in real estate in that office?

"A. That's right, I have no basis except just common sense.

"Q. You can surmise and conclude as you wish, but that is not what we are looking for.

"A. All right.

"Q. And likewise, you have no basis to say that they were engaged in bootlegging in that office?

"A. That's right.

"Q. Because you don't really know what kind of business they were conducting in that office?

"A. That's right.

"Q. And likewise, you do not know whether or not Frank Costello was engaged in the real estate business, do you?

"A. That's right.

"Q. Do you recall receiving that telegram?

"A. It was sent to my mother. I didn't receive it.

531 "Q. When is the first time you saw it?

"A. When is the first time?

"Q. When is the first time you saw the telegram?

"A. Right after my father's death. It was sent to Detroit.

"Q. Sent to your mother?

"A. Yes.

"Q. And you saw it when she received it?

"A. Yes.

"Q. And where was it after she received it?

"A. Where was it?

"Q. Who had it?

"A. My mother.

"Q. In her possession?

"A. Yes.

"Q. Do you know that?

"A. Yes.

"Q. How do you know that?

"A. She went and got it for Mr. Solomon.

"Q. Do you live with your mother?

"A. No. She lives with me nine months of the year.

"Q. Where does she live the other three months?

"A. Cleveland, New York.

532 "Q. Was this telegram in your home when she found it for Mr. Solomon?

"A. No.

"Q. Where was it when she found it for Mr. Solomon?

"A. Actually, I don't know where she got it. She might have gotten it down at her house.

"Q. So you don't know where the telegram was kept from the time it was received until the time Mr. Solomon got it?

"A. It was in her possession.

"Q. But you don't know where it was?

"A. She had it. It was in her possession.

"Q. I understood she lived with you for nine months and lived in Cleveland, New York, for three months of the year.

"A. That's right.

"Q. And it wasn't in your home?

"A. Most likely it was down at her house.

533 "Q. What years were you in the office in the Long Beach building—what year were you going into the office there, or what years?

"A. That was in 1925. The end of 1924 and 1925.

"Q. '24 and '25?

"A. Yes.

"Q. Where were you living at the time you went there?

"A. Commack.

"Q. Commack, Long Island?

"A. Yes.

"Q. And during that period of 1924 and 1925 you went there three or four times?

"A. That's right."

538 Mr. Robson: This is a deposition of one John McLeod also taken on December 4, 1958 at Los Angeles pursuant to notice, and I would like to offer it as Government's Exhibit 35.

I would like to read a few excerpts from it.

Mr. Robson: Page 3:

"Q. Mr. McLeod, were you at one time a member of the United States Coast Guard?

539 "A. Yes, sir.

"Q. Approximately when was that?

"A. Prior to 1925.

"Q. Do you recall when you joined the Coast Guard?

"A. No, I don't. I haven't—I can't remember.

"Q. Do you remember about how long you were in the Coast Guard?

"A. Over a year, a little bit.

"Q. Would the date April, 1925 refresh your recollection?

"A. I think it would be something along there.

"Q. When you joined the—

"A. I think so.

"Q. Where were you stationed in the Coast Guard?

"A. New London, Connecticut.

"Q. Now, while you were at New London, Connecticut, did you have occasion, do you recall, to meet someone by the name of Harry Sausser?

"A. Yes.

"Q. I show you a photograph which is marked Government's Exhibit One for identification in the deposition of Philip Coffey and I ask you if you see the man that you met as Harry Sausser in that picture?

"A. That looks like him right there.

540 "Mr. Robson: May the record indicate that the witness is pointing to a man sitting in the middle of the picture on the right side above and below two women. One woman right below, a woman holding a dog, is that correct?

"A. Yes.

"Q. And right in front of him is a woman sitting with her hands crossed in front of her knees, is that right?

"A. Yes.

"Q. And that is the man known as Harry Sausser? Is that the man with the cigar in his mouth?

"A. Yes."

Will Mr. Williams concede that the witness identified the same photograph which had previously been identified as that of Harry Sausser, Government's Exhibit 4 in evidence?

Mr. Williams: Yes.

Mr. Robson: "Q. Approximately how soon after you joined the Coast Guard was it that you met Harry Sausser?

"A. Oh, I would say three or four months maybe.

"Q. Three or four months. And this was in New London?

541 "A. Yes.

"Q. Was anybody with Harry Sausser when you met him?

"A. Yes, I think it was several others with him.

"Q. Do you remember who any of them were?

"A. I can't remember now; I think some of them were in the Coast Guard.

"Q. You hadn't met Harry Sausser before this, had you?

"A. No.

"Q. Do you recall who introduced you to him?

"A. No, I don't.

"Q. Now, did you have"—

Mr. Williams: Now, your Honor, beginning here I object to the testimony in the next two and a half pages, because it is all hearsay, recounting what Harry Sausser told the witness McLeod. Maybe you should read it. I would like to make that objection now so that your Honor will have that in mind when you hear this question.

The Court: What is the question?

Mr. Robson: "Q. Now, did you have any occasion to have any conversation with Harry Sausser either at that meeting or subsequently?

542 "A. I think at that time Harry Sausser lost a boat. I think that was the reason he was in New London.

"Q. Is this what he told you?

"A. Well, he was telling us all. We were in a local restaurant or saloon.

"Q. What do you mean by lost a boat? Can you explain that?

"A. He had a load of rum on it, got caught coming down, got caught close by there some place.

"Q. You mean a boat of his had been picked up by the Coast Guard for running rum?

"A. Yes.

"Q. Did you have any other conversations with Sausser? Do you recall anything else he said?

"A. No, I think it was the start of a big party that night, I can remember."

Then further down the page:

"Q. Do you recall Sausser saying anything about having any liquor aboard the Vincent A. White?

"A. No, the only thing I heard Sausser saying about he got all the way down to off some—between some island or something, he was all clear and when he got 543 caught I think it was a shore station man that caught him. He was in that close to shore anyhow, I think it was a shore man who picked him up."

That is the only portion of the deposition I would like to introduce.

559

New York, January 6, 1959
10:30 o'clock a.m.

560 (Deposition of Philip Coffey):

Mr. Robson: (Reading):

"Q. Mr. Coffey, how old are you?

"A. Born in '88, will be 70 the 19th day of this month.

"Q. And where do you reside?

"A. 1805 North Wilcox, Hollywood.

"Q. Are you employed?

561 "A. No—off and on. I am employed at the Bole Inn, it is a saloon we will say, and he calls me up once in a while, 'will you come and work for me for two or three hours,' and that is it. I don't get in over—well, if I have a good week I might probably \$30.00 or \$31.00, that's about the extent.

"Q. Outside of your income from these occasional periods of service as a bartender, do you have any other income?

"A. Social Security.

"Q. You receive Social Security?

"A. Oh, yes, 94, 90 a month.

"Q. Now, were you ever employed by the Government, Mr. Coffey?

"A. Yes.

"Q. And when was that?

562 "A. Well, I would have to say around 1920 or '21—'20 or '21, around that years.

"Q. And what was your position with the Government?

"A. As Inspector, Prohibition Inspector.

"Q. With the Treasury Department?

"A. That was the Treasury Department.

"Q. For how long did you serve as a Prohibition Inspector?

"A. Oh, less than a year, couldn't tell exactly but less than a year.

"Q. Did you leave that position voluntarily?

"A. No, I was—Mr. O'Connor, who was the Director at the time, called another fellow and myself into the office and told us to resign.

"Q. Have you ever been arrested or convicted of any crime?

"A. No, outside of—well, bookmaking here.

"Q. You were arrested in the 1920's, do you recall, in connection with bootlegging?

"A. 1920?

"Q. 1925.

A. Well, yes, I was arrested then, everybody, Bill O'Dwyer, and I don't know how many more.

563 "Q. Did you go to trial?

"A. Yes.

"Q. What was the result of that trial?

"A. The result was disagreement.

"Q. Were you ever retried?

"A. No.

"Q. And you say you were in addition arrested for bookmaking on several occasions?

"A. I was arrested three times, bookmaking, no convictions.

"Q. Do you recall when that was?

"A. Sir?

"Q. Do you recall when that was?

"A. Well, let's see. Say maybe four or five years ago. Yes, it has to be that long or more.

"Q. You left the Government service in about 1921 or 1922, is that correct?

"A. Yes.

"Q. What did you do when you left the Government?

"A. I sold whisky.

"Q. Were you ever employed by someone by the name of Manny Kessler?

"A. Yes.

"Q. Was that right after you left the Government?

564 "A. Yes.

"Q. What was the nature of your job with Manny Kessler?

"A. Well, the nature was on withdrawals, withdrawals from Government warehouses.

"Q. Withdrawals of what?

"A. Wines and whiskies and—

"Q. Exactly what did you do? Would you describe your work.

"A. Well, Mr. Kessler would give me—his office—or Mr. Kessler would give me withdrawal certificates to go to whatever warehouse and withdraw whatever amount of whisky or wines that was on the withdrawal list. Maybe 100 cases, 50 cases, 200 cases, whatever it was.

"Q. What did you do when you got these withdrawal certificates?

"A. Went to the warehouse.

"Q. Did you go alone?

"A. No, the truck went to the warehouse and I went back to the office. I just—my job was just seeing that the withdrawals were placed on the truck and the truck went away and I went in the car with another fellow.

565 "Q. So far as you know this liquor which was withdrawn was withdrawn legally pursuant to a certificate, is that right?

"A. That's what they—of course, the Government warehousemen wouldn't give it to you unless it was legitimate.

"Q. Do you have any knowledge of the use which was made of the liquor after it was withdrawn?

"A. I didn't care; no.

"Q. You have no idea where it was sold?

"A. Well, naturally I have an idea.

"Q. Of your own knowledge now?

"A. Well, I imagine it wound up in saloons.

"Q. I don't want to know what you imagine. Do you know where it wound up?

"A. No, I don't.

"Q. Did you have occasion to deliver the liquor or make arrangements for its delivery?

"A. No.

"Q. The last you saw of it was when it was placed on the trucks?

"A. On the trucks.

"Q. Did you have any connection with any whisky while you worked for Manny Kessler which did not come
566 from a Government warehouse?

"A. No.

"Q. Did you have any knowledge of any whisky which did not come from a Government warehouse?

"A. No.

"Q. Did you see any whisky while you worked for Manny Kessler which did not come from a Government warehouse?

"A. No.

"Q. Do you know whether or not Manny Kessler was engaged in dealing in liquor which was imported from outside the country?

"A. Repeat that question.

"Q. Do you have any knowledge of whether or not Manny Kessler was engaged in importing liquor from outside of the country?

"A. No.

"Q. You have no knowledge?

"A. No.

"Q. Incidentally, this period during which you worked for Manny Kessler was a period when the National Prohibition Act was in existence, is that right?

"A. Yes.

"Q. How long did you work for Manny Kessler?"

567 "A. Oh, I would say maybe a year.

"Q. When you worked for Manny Kessler, did you ever have occasion to meet Frank Costello?

"A. Well, not in a business way; I met him socially.

"Q. Did you have any conversations with him?

"A. Regarding liquor?

"Q. Well, did you ever have any conversations with him at all about anything?

"A. Well, as I say, socially I have met him in restaurants and around New York.

"Q. Did you ever have any conversations with him concerning liquor?

"A. No.

"Q. This is while you are working for Manny Kessler now?

"A. No.

"Q. What did you do after you stopped working for Manny Kessler?

"A. Well, I sold whiskey.

"Q. Who did you sell whiskey to?

"A. Different saloons around New York.

"Q. Where did you get the whisky?

"A. Well, Eddie Costello.

567a "Q. Is Eddie Costello related to Frank Costello?

"A. I believe as far as I know he is a brother.

"Q. Where did you speak to Eddie Costello about buying whisky?

"A. Well, in his office there in Lexington Avenue.

568 "Q. Do you recall where on Lexington Avenue it was?

"A. Well, it was I would say around 43rd, 44th Street, around in there.

"Q. Could it have been 42nd Street?

"A. I think it was up above 42nd Street on Lexington. Maybe it was in the middle block between 42nd, 43rd, I don't remember now.

"Q. Do you remember the address?

"A. No.

"Q. Does 405 Lexington Avenue refresh your recollection?

"A. Yes, I guess that would be it. Is that above 42nd Street?

"Q. Well, do you recall whether this building was on the site which is now occupied by the Chrysler Building?

"A. It was on the east side, yes.

"Q. On the site which is now occupied by the Chrysler Building?

"A. I guess so, yes.

"Q. How often did you go up to this office to purchase liquor?

"A. Whenever I had occasion to give orders where 569 to deliver and probably once a week or maybe not that often.

"Q. I show you Government's Exhibit one for identification and ask you if you can identify the persons whom you know as Frank Costello and Eddie Costello on this photograph?

"A. This I would say is Frank.

"Q. Which one is that? Could you describe his appearance in the picture?

"A. This picture here. This is Frank Costello here.

"Q. Is that the man in the extreme upper right-hand corner holding some sort of a pole?

"A. Yes, yes; Eddie, that's the only one I know in this picture.

"Q. You don't see Eddie Costello in that picture?

"A. No, I don't.

570 "Q. I show you Government's Exhibit Two for identification and ask you if you can identify that person?

"A. Looks to me like Eddie Costello; I would say it is."

571 "Q. Could you describe the office at 405 Lexington Avenue or the office to which you went?

"A. Well, it was upstairs, I believe, on the first floor—the second floor I mean. As I recall on the second floor and not too big an office. I don't know whether it was one full room or whether it was more than one room.

"Q. When you walked in was there any sort of a railing separating—

"A. Not that I recall.

"Q. How large a room would you say it was?

"A. Well, I would say a room almost as large as this, maybe not quite as large.

"Q. What are the dimensions of this room, about 25 by 20? Well, can you estimate in feet approximately?

"A. Well, I would say the room was from that door over to that wall there and just about the same depth. That's what I would say, what the footage is, I don't know.

572 "Mr. Robson: Well, can we have some agreement on what the size of this room is? I say about 20 by 25, maybe it is a little larger.

"Mr. Fuller: We will say it is 25 by 25, it looks almost square.

"Mr. Robson: Stipulated that the room described is about 25 by 25.

"Q. What was in the room?

"A. Well, there was a desk there, I know that.

"Q. How many desks?

"A. One is all I recall.

"Q. One is all you recall?

"A. (Witness nods affirmatively.)

"Q. And who do you recall seeing in that room when you went up there?

"A. Well, I saw Eddie and I saw another fellow there, big tall fellow; they said his name was Ellis. Ellis, I believe they called him.

"Q. Do you recall seeing anybody else up there?

"A. No. Well, I saw Frank up there.

"Q. You saw Frank Costello?

"A. Frank was up there some time when I was up there.

"Q. Who was sitting at the desk when you went up there?

573 "A. Well, I think as I recall Mr. Ellis."

Mr. Robson: There was an objection by Mr. Fuller: "Can we have a period on this now, what time we are talking about?

"Mr. Robson: This is subsequent to your employment with Manny Kessler for about—

"A. This is after.

"Q. After you were employed by Manny Kessler. When did you stop working for him?

"A. Well, as I say I worked about a year I worked for him. I don't know just what year it was. It was right after I got out of the Government.

"Q. Would this have been—

"A. Around 1922 I would think, somewhere around there.

"Q. This was 1922 or 1923 that you were up there?

"A. Yes.

"Q. And this was for a period of how long that you went to this office?

"A. Not too long. I wouldn't say—I would say less than a year.

"Q. For a period less than a year you went up to this office?

574 "A. I would say that. It is so long ago.

"Q. I realize that. Just asking for the best recollection.

"A. Yes.

"Q. Where was Frank Costello in the room when you were up there?

"A. Well, I think I only saw Frank up there once or twice. I think he sat behind the desk. I think, I won't swear to it.

"Q. And where was—

"A. He was in the room maybe once or twice when I

was up there, but all my business was with Eddie Costello.

575 "Q. Was Frank Costello there while you were making arrangements with Eddie Costello?

"A. He was there, I guess, yes.

"Q. Was he close enough to hear a conversation in your opinion?

"A. I think he probably was, I wouldn't know."

• • • • •
"Q. I will ask him again. Do you recall whether Frank Costello was present at any of the times when you were talking to Eddie Costello about purchasing liquor?

"A. Well, yes. I believe he was present, yes. I know he was present but he didn't concern himself about asking me any questions about whisky.

"Q. Do you recall how far approximately he was standing or sitting from where you were talking to Eddie Costello?

576 "A. Oh, I don't know, maybe 15 feet—10, 15 feet, something like that.

"Q. Were you talking to Eddie Costello in an ordinary conversational tone of voice?

"A. Yes.

"Q. In your opinion were you talking loud enough for Frank Costello to have heard what you were saying?

"A. Well, probably if he was paying any attention he could probably hear me, yes.

"Q. Do you recall being examined and giving a statement in May of 1953 over at the office of the Immigration and Naturalization Service in New York?

"A. In New York?

"Q. I am sorry, in California.

"A. I was with Mr. Solomon.

"Q. Mr. Solomon asked you some questions, is that right?

"A. That's right.

"Q. And you recall that there was a stenographer present at that time?

"A. I believe there was.

"Q. And do you recall being given a copy of the statement which was transcribed and having been asked to sign it?

"A. Yes.

577 "Q. And do you recall having initialed each of the pages of the statement?

"A. Yes.

"Q. Did you read the statement after you gave it?

"A. Yes.

"Q. Was it accurate at the time you gave it?

"A. Well, as far as my knowledge, yes."

At this point the statement was marked for identification as Government's Exhibit 3.

"Q. I show you Government's Exhibit 3 for identification and I ask you if this is your signature on page 15?

"A. Yes.

"Q. I ask you to look at the margins of the other pages and ask you if those are your initials in the margins of each one of these pages. Are those your initials in the margins?

"A. Yes.

578 "Q. Mr. Coffey, subsequent to the time you made this statement, that is, after you made this statement in 1953, did you have occasion to talk about this case with anybody other than people representing the United States Government?

"A. Well, yes, I talked about the case with friends of mine.

"Q. Which friends did you talk about the case?

"A. Well, Bill Frawley; for one, and—well, probably several.

"Q. Did you talk to anybody from the office of the attorneys representing Mr. Costello?

"A. No.

"Q. You didn't?

"A. (Witness nods head negatively.)

"Q. Did you have any occasion to talk about this case with a man named Jim O'Connell?

"A. Yes.

579 "Q. When was that?

"A. Well, let's see. When was the case?

"Q. The trial was in 1956.

"A. '56.

"Q. September.

"A. It was in September as I recall, is that right?

"Q. Yes.

"A. Well, I would say around the first part of September or the middle of September.

"Q. This was just about the time when you had been contacted by somebody in the Government with regard to coming to New York to testify, is that right?

"A. I don't quite understand that.

.

"Q. Who was Jim O'Connell?

"A. Well, Jim O'Connell I knew in New York for several years and I knew he was a bootlegger same as I was.

"Q. Was he ever associated with Frank Costello to your knowledge?

580 "A. Not that I know.

"Q. Wasn't Jim O'Connell Frank Costello's bodyguard at one time?

"Mr. Fuller: I object to the question as misleading.

"Mr. Robson: Then I withdraw it.

"Q. You say to your knowledge Jim O'Connell was never in any way associated with Frank Costello?

"A. To my knowledge no.

"Q. What did you say to Jim O'Connell about the case?

"A. Well, he was out here and he took me to dinner one night and met some other people. I have forgotten

who they were, a couple of girls, up at Romanoff's Restaurant and I said, 'What are you doing out here, Jim?'

• • • • •
 "Q. Just tell us what you said to him."

"A. I don't know what the ~~hell~~, I did say."

581 "Q. But you had a conversation with him about the case?

"A. We talked about the case, yes."

"Q. And this was in the beginning of September 1956?

"A. Yes, the early part of September or middle of September."

"Q. Do you recall being asked in the statement that you made in 1953 these questions and having given these answers?"—

• • • • •
 Mr. Robson: (Reading)

585 "Mr. Fuller: I object. Are you trying to impeach him now? He has previously testified that he did not buy liquor and now you are impeaching your own witness."

"Mr. Robson: Yes."

"Mr. Fuller: There is no necessity for objection, I believe."

"Mr. Robson: You can make an objection in the record. I think that is a proper objection as to form right now."

"A. Well, I don't—I don't want to perjure myself but it is so vague to me that I might have and I might not have, but I say I don't want to perjure myself and will not for anybody."

"Q. Well, you did say in 1953 that you did purchase liquor from Frank Costello?"

"A. Well, according to what you are reading there, yes."

Mr. Williams: I think that is objectionable. I rise at this point, because it is adverting to the statement rather than his testimony at the moment under oath. In

586 other words, this answer is, well that is what is in the statement you handed me.

The Court: Well—

Mr. Williams: The next question, your Honor, I think straightens it out because he says, "What is your present testimony?"

The Court: Yes. All right. Well, then, I will sustain your objection to that.

Go on to the next.

Mr. Robson: (Reading)

"Q. What is your present testimony? Did you or did you not purchase liquor from Frank Costello?"

"A. Oh, it is so hard—I won't say yes and I won't say no; I might have and I might not have, I don't recall. That's my—

"Q. You don't recall whether you ever discussed liquor with Frank Costello?"

"A. I have discussed liquor with Frank Costello, yes.

"Q. In connection with your own purchases of liquor?"

"A. Well, yes, I will say that.

"Q. You spoke to Frank Costello about buying liquor?"

"A. Yes.

587 "Q. You told him you wanted to buy liquor?"

"A. Well—

"Mr. Fuller: I object to the questions. You are leading the witness again.

"Mr. Robson:"—

The Court: Overruled. What is the answer?

Mr. Robson: (Reading)

"Q. What did you tell Frank Costello about purchasing liquor?"

"A. I didn't tell him anything as I recall.

"Q. What were your conversations about?"

"A. Well, I did all my business with Eddie Costello.

• • • • •

"Q. What were your conversations with Frank Costello about liquor at this time?

"A. Well, I would say price, how much so-and-so was, so-and-so not.

387a "Q. You asked Frank Costello about what, the price?

"A. Eddie Costello and Frank, yes.

388 "Q. You did speak to Frank Costello about the price of liquor?

"A. Well, I would say Eddie Costello did all my business. I did business with Eddie Costello all of the—

"Q. I am trying to find out now about the conversations you had with Frank Costello about liquor, not Eddie Costello.

"A. Well, I don't remember.

"Q. You did have conversations with him about liquor, you say?

"A. Yes, yes."

• • • • •
390 "Q. Can you explain how come you remembered in 1953 that you had purchased liquor from him and you can't recall it now?

"A. No.

"Q. And you can't recall what your conversations with Frank Costello were in connection with liquor?

"A. No. We talked casually about price of so-and-so and so-and-so, and I could get it maybe a few dollars cheaper from somebody else and—

"Q. What does so-and-so refer to, brands of liquor?

"A. Brands of liquor.

"Q. Now, other than the purchase of liquor at 405 Lexington Avenue and these conversations that you just talked about, did you ever have any other occasion to—or did you ever deal with Frank Costello in any other way in regard to liquor?

"A. Uh-huh.

391 "Mr. Fuller: I didn't get the answer.

"A. No.

"Mr. Robson: Q, Do you recall a boat by the name of the Vincent A. White?

"A. Yes.

"Q. Do you recall having done anything in connection with unloading liquor from that boat?

"A. Yes.

"Q. What did you do?

"A. Well, I supervised—I went out with the order and I have forgotten now whether it was Bill's or whether it was an order that Frank Kelly gave me.

592 "I went out to the boat and gave the order to the super-cargo man and the boats were there that I hired from Montauk Point and they loaded the boats and brought it to shore.

"Q. Now, who requested you to go out to the Vincent A. White?

"A. Frank Kelly.

"Q. When was this?

"A. Well, this—it must have been about 1924 or 5—I imagine '25. When were we all arrested? '25, wasn't it?

"Mr. Fuller: December '25.

"Mr. Robson: December, 1925?

"A. That's when it was, just before that.

"Q. And you say you were requested to go out there by Frank Kelly?

"A. Frank Kelly.

"Q. Was anybody with Frank Kelly at the time?

"A. Sir.

"Q. Was anybody with Frank Kelly at the time he made this request?

"A. No, not that I recall; no.

"Q. Frank Costello was not with him when he came out to see you?

593 "A. Frank Costello was out in the car; he sat out in the car.

"Q. Did you have occasion to speak to Frank Costello at that time?

"A. I said hello to him, yes.

"Q. You said hello to him?

"A. Yes.

"Q. You had already met Frank Costello previously, hadn't you?

"A. Oh, sure.

"Q. You knew who he was?

"A. Yes.

"Q. He sat in the car?

"A. Yes.

"Q. Where was the car parked?

"A. The car was parked outside the restaurant where I live.

"Q. Where was that?

"A. Montague Point."

And that should be, of course, Montauk Point.

The Court: Yes.

Mr. Robson: (Continuing reading):

"Q. What was the name of the restaurant?

"A. Schaeffer's, I believe.

594 "Q. Who was driving the car, do you recall?

"A. Frank Costello.

"Q. Frank Costello was driving?

"A. Yes.

"Q. Frank Kelly got out of the car?

"A. Yes.

"Q. Were you outside when the car drove up?

"A. No, I was inside.

"Q. Were you called to come outside?

"A. Yes.

"Q. Who called you?

"A. Well, say Frank Kelly, I believe, came in the restaurant, asked if Phil Coffey was around and somebody there—Schaeffer, I presume—said, 'He is in his room.'

"Q. Yes?

"A. So that's how I met Frank Costello or Frank Kelly.

"Q. Frank Kelly was then in the restaurant?

“A. Yes.

“Q. What did you do, walk back outside with him and meet Frank Costello?

“A. After we finished our business, yes.

“Q. After you finished your business. This was
595 not before?

“A. Yes.

“Q. Did you ever take any whiskey off the Aryca for anybody?

“A. I don't recall—Aryca—I don't remember that name.

“Q. Do you recall this conversation with Frank Costello which appears on the answer to these questions. Frank Costello you said said to you, ‘I have some whiskey outside, do you think you could bring it in for me?’ Do
596 you recall him saying that to you?”

Mr. Robson: (Continuing reading): Not—my conversation was with Frank Costello, that was with Frank Kelly.

“Q. Do you recall a conversation with Frank Costello in which he made that statement to you?

“A. No.

597 “Q. But now you deny that you had any conversation with Frank Costello?

“A. I don't deny anything. I said I probably did and probably did not; I am not denying.

598 “Q. You couldn't have probably did and probably did not. Either you did or you did not.

“A. Well, I don't remember.

“Q. Did you discuss this question with Jim O'Connell?

“A. What question?

“Q. The answer which you gave to this question when you said that Frank Costello said to you, ‘I have some

whiskey outside, do you think you can bring it in for me?'
Did you discuss that with Jim O'Connell?

"A. With Jim O'Connell, no, no.

"Q. Were you ever paid for bringing in this liquor from the Vincent A. White?

"A. Yes.

599 "Q. By whom?

"A. Well, as I said before I think it was the big tall fellow by the name of Ellis.

"Q. Where were you paid?

"A. In the 405 Lexington Avenue.

"Q. Who told you to go to 405 Lexington Avenue for payment?

"A. Frank Kelly.

"Q. What did he say when he told you to go to 405 Lexington Avenue?

"A. 'Go get your money.'

"Q. Did he say who would pay you?

"A. No.

"Q. Did he say Frank Costello?

"Mr. Fuller: I object, that is a leading question."

The Court: Overruled.

Mr. Robson: (Continuing reading)

"Q. Didn't he tell you that Frank Costello would take care of paying you for the whiskey?

"A. No.

"Q. He didn't?

"A. He said go to the office and get your money.

"Q. Go to whose office?

"A. Costello's office.

600 "Q. He told you to go to Costello's office?

"A. Yes.

"Q. Frank Costello's office?

"A. Yes. Well, Eddie Costello, Frank Costello.

"Q. Did he tell you Eddie Costello or Frank Costello?

"A. Frank Costello.

"Q. He told you to go to Frank Costello's office and you would get paid?

"A. Yes, the bookkeeper would pay you, that was Ellis, I believe.

"Q. At Frank Costello's office?

"A. Yes.

"Q. You knew that Frank Kelly and Frank Costello were in this deal together, didn't you?

"A. Well, yes; I probably did.

"Q. How did you know they were in it together?"

604 "A. Well, on account of Frank Costello being with Kelly that day coming down to Montague Point."

Mr. Robson: "Q. As a matter of fact, Frank Costello was the man who asked you to bring in the liquor, didn't he?"

Mr. Robson: "A. No.

611 Mr. Robson: "Q. Were you present when the liquor was landed on the dock?

"A. What?

"Q. Were you present when this liquor was landed on the dock?

"A. Yes.

"Q. What happened to it when it was landed on the dock?

"A. What?

"Q. What happened to it?

"A. Well, it was put on trucks and sent to New York.

612 "Q. Who put it on the trucks?

"A. My men that worked for me.

"Q. Your men put it on the trucks?

"A. Yes.

"Q. What trucks did they put it on?

"A. I don't know the names of the trucks.

"Q. How did you know what trucks to put it on?

"A. Well, I believe they came down with an order.

"Q. An order from whom?

"A. From Frank Kelly.

"Q. Do you know any of the people who were present at the time those trucks were loaded?

"A. Well, people down at Montague Point there, that's—I don't know their names. If I see them I would probably recognize who they were but they loaded the trucks for them.

"Q. Wasn't one of them named Harry Sausser?

"A. No. . . . I don't know Harry Sausser.

"Q. Were you ever out at a place known as One Hundred Eighteen or One Hundred Fifteen Halsey Street, Astoria?

"A. Yes, I believe—if that's the address, that's Eddie Costello had stored liquor, was at the address where Eddie Costello—

613 "Q. Was this a house where Eddie Costello lived?

"A. Well, I don't know the number of the house but I was out there, Eddie Costello, where he stored liquor.

"Q. Out at Astoria on Halsey Street?

"A. Well, I guess Halsey Street.

"Q. And where was the liquor stored?

"A. In a garage there.

"Q. In a garage. Is that in front, the side or in back of the house?

"A. Rear.

"Q. The rear of the house?

"A. Yes.

"Q. Who told you to go out there? Who told you that liquor was stored out there?

"A. Well, Eddie Costello.

"Q. You are sure it wasn't Frank Costello?

"A. It was not Frank Costello.

614 Mr. Robson: "Q. That is true that you did work for Frank Costello and that you landed some whiskey for him?

"A. Well, my opinion was indirectly. Frank Kelly did all the business. Now Frank Costello was connected with Frank Kelly, that's probably true, yes.

"Q. You didn't mention Frank Kelly in these answers, did you?

"A. I believe I did.

"Q. I just read you the answers. Did you hear Frank Kelly's name mentioned?

"A. No, I did not.

"Q. You said that you landed the whiskey for Frank Costello, that you worked for Frank Costello, he paid you off. You didn't mention Frank Kelly."

Mr. Robson: "A. He didn't pay me off, Mr. Ellis paid me off.

"Q. Mr. Ellis actually gave you the cash but Mr. Costello made the arrangements, didn't he?

Mr. Robson: "A. I don't know that. Do I know that? How do I know that?

"Q. He made the arrangements with you, didn't he?

"A. Costello? Frank Kelly made the arrangements with me to go to Frank Costello's office and get paid.

"Q. And Frank Kelly was the one that you worked for in unloading the liquor?

"A. Frank Kelly was the one who gave me the order to go out and get it and unload it.

Mr. Robson: "Q. You did do some work for Frank Costello?

"A. You are pressuring me. I told Mr. Solomon I never did any direct business with Frank Costello.

"Q. I am reading to you your answers.

"A. All right; my answer is yes, yes; all right.

"Q. You did land whiskey for Frank Costello?"

"A. Yes.

"Q. You had a conversation with him about this whiskey?

"A. My conversation was with Frank Kelly.

"Q. What did you mean when you said, 'I landed some whiskey for Frank Costello'?

"A. Well, I guess probably I thought it was Frank Costello's.

"Q. Why did you think it was Frank Costello's?

"A. Because Frank Costello came down there with Frank Kelly.

"Q. But he said nothing?

"A. He said nothing.

"Q. And the fact that he was there made you think that it was his liquor?

"A. That's right.

"Q. Even though Frank Kelly spoke to you?

"A. That's right.

619 "Q. Can you explain why you arrived at that conclusion?

"A. Oh, just natural to assume that Costello was connected with Frank Kelly.

"Q. Why was it natural to assume that?

"A. Well, because they were together. I wouldn't think Frank Costello would be down with Frank Kelly, way down at Montauk Point if he wasn't interested.

"Q. Montauk Point is quite a ways out from New York City, isn't it?

"A. 136 miles.

• • • • •
"Q. Are you sure it wasn't Frank Costello who came in and Frank Kelly sat out in the car?

"A. Frank Costello sat out in the car.

• • • • •
621 Mr. Robson: As a matter of fact, I believe I may want to read some portion of the cross-examination.

• • • • •

"Q. When you were told or when you indicated that Frank Kelly told you to go to the office to get paid; do you recall that he said to go to Frank Costello's office?

622 "Q. Or did he say just to go to 405 Lexington Avenue?

"A. Go to Costello's office.

"Q. Did he have to tell you where to go at all? Wasn't it a fact that you knew where to go in any event?

"A. Yes.

"Q. Isn't it possible that he didn't tell you to go to Costello's office but just told you to go downtown and get paid?

"A. He could have but I knew where to go."

623 "Q. On the occasion when you mentioned previously that Mr. Jim O'Connell had been out here to see you—

"A. He was not here directly to see me."

"Q. Correct. Isn't it a fact that he was out here on vacation in the West?

"A. That I don't know; vacation I don't know. He didn't tell me he was on vacation. I have known Jim for years.

624 "Q. And did you consider it strange that he should happen to be out here and call upon you when he was in the neighborhood?

"A. I considered it strange.

"Q. You did?

"A. Yes.

"Q. How many—

"A. Well, I said to him, 'What the hell are you doing out here?'

"Q. You thought it was strange that he was out here?

"A. Yes. That's what he—I mean—

"Q. But you weren't surprised that once he was out here that he should have called you?

"A. Well, he called on me and we went out to dinner.

"Q. But you weren't particularly surprised by that, were you? Other than the fact that you—"

"A. Yes, sir, I was surprised. He called on me; I was greatly surprised, yes."

On page 54. This is redirect now.

"Q. Mr. Coffey, just a few questions now. After this deal that you say Frank Kelly spoke to you about unloading the liquor and you went to 405 Lexington Avenue for payment, you said you knew where to go. How did you know that you were supposed to be paid at 405 Lexington Avenue?"

"A. Well, I didn't know.

"Q. You must have been told then that you had to go there.

"A. Frank Kelly told me.

"Q. He told you to go to Frank Costello's office, didn't he?"

"A. Yes.

"Q. Otherwise you would have had no way of knowing that that's where you were supposed to be paid?"

"A. That's right."

626 Mr. Robson: At page 57:

"Q. What is your answer now? Do you recall what you were told by Frank Kelly about getting paid?"

"A. I asked Frank Kelly where do I get my money. He said, 'Go to Costello's office on Lexington Avenue.'

"Q. Now, prior to the time that you saw Jim O'Connell in 1956, when had you last seen him?"

"A. Well, I hadn't seen Jim O'Connell in—well, let's see. I come out here in '34; I don't think I had seen Jim O'Connell in—oh, years before that.

"Q. So that when he visited you in 1956 this was pretty close to 30 years when you had last seen him, is that right?"

"A. Yes.

"Q. And he dropped in and invited you out to dinner?"

"A. Yes. I don't know who—"

Page 70:

"Q. When you walked into the office you must have said something to somebody, right? When you went up to get paid?

"A. I guess I said whose—oh, I said, Frank—I saw Frank there.

627 "Q. What did you say?

"A. Well, Frank said to me, 'Go and see Ellis, Ellis will take care of you.'

"Q. Didn't he ask you what you were doing there?

"A. No.

"Q. He seemed to know what you wanted?

"A. I imagine he did. He told me to go get paid from Ellis, didn't he, so he must have known what I was there for.

"By Mr. Fuller:

"Q. Did you tell him that Frank Kelly sent you?

"A. Yes—no, I didn't tell him; no, no. I didn't have to tell him that. He knew what I was there for.

"Q. You didn't tell him that 'Frank Kelly told me to come in here'?

"A. Well, maybe I did. I—Frank Kelly told me to go to Costello's office and to get my money and when I went to Costello's office Frank was there and said go and see Ellis, the bookkeeper."

• • • • •
The Court: Is there anything further that you wish to read from the deposition, Mr. Williams?

Mr. Williams: Yes, sir, page 46, the sentence
628 after the interrogation which Mr. Robson read into the record from that page which reads as follows:

• • • • •
"Q. You have no personal recollection that he told you to go to Frank Costello's office?

"A. It is so long ago for goodness sakes, 25 years."

Page 53, the interrogation immediately after that which Mr. Robson read from this page, which is as follows, the questions by Mr. Fuller and the answers by Coffey:

"Q. Were you pleased with the visit?

"A. Well, yes.

"Q. Did you have an enjoyable evening?

"A. Yes.

"Q. Did you have any difficulties with Mr. O'Connell?

629 "A. Oh, no.

"Q. Did you have any arguments with Mr. O'Connell?

"A. No.

"Q. Did your attitude in this case change in any way after you saw Mr. O'Connell?

"A. No, not a bit."

At page 51, if the Court please, the following interrogation by Fuller and the answers by Coffey:

"Q. Isn't it a fact also that you do not know that Frank Costello ever overheard any conversation that you ever had in that office with his brother Ed?

"A. He could have overheard and then if he wasn't paying any attention, he didn't hear.

"Q. You have no reason to believe that he ever did hear any conversation?

"A. No, no reason to believe.

"Q. Isn't it a fact, Mr. Coffey, that you do not know of your own personal knowledge that Mr. Frank Costello ever engaged in bootlegging or in the sale and
630 purchase of alcohol?

"A. Well, through hearsay I would say.

"Q. I am not talking about hearsay. Of your own personal knowledge you do not know, do you, that he was ever so engaged in the business?

"A. Well, other than Frank and Eddie they must have been brothers and they were in the same office so that's—

"Q. You don't know, you personally have no knowledge of any transaction which ever occurred which Frank Costello took part?

"A. Well, I thought that he was in the business.

"Q. But you never knew this?

"A. I never had any direct—

"Q. However, you did do business with Ed Costello?

"A. That's right."

Page 60, if the Court pleases; this is further examination by Fuller and answers by Coffey:

"Q. He didn't say to Frank Costello's office, didn't he? He said Costello's office?

"A. Costello's office.

"Q. It could have been Ed Costello's office for all you know?

"A. Could have been. He said, 'Go to Costello's 631 office and get your money.'

"Q. And your identification with that office was with Ed Costello, was it not?

"A. Yes.

"Q. All your previous transactions in that office had been with Ed Costello?

"A. That's right.

"Q. And when he said Costello's office you thought of it as being at Costello's office because whenever you went there—"

Then at this point Mr. Robson said:

"Let's not put words in his mouth. I don't mind you leading him a little bit."

Then Mr. Fuller said: "I am cross-examining him."

Mr. Robson thereupon said: "Well, let's not put words in his mouth."

The Court: Well, what was the answer.

Mr. Williams: The answer was:

"Well, I answered that I believe assuming that when Frank Costello was there and Eddie Costello, I assumed that they were partners or in deals together.

"Mr. Fuller:

"Q. Yes, but your business was always with Ed 632 Costello?

"A. My business was with Ed Costello. I think if Mr. Solomon recalls when he first came out here why I told you repeatedly that I had never had any direct business with Frank Costello.

634 Mr. Robson: Yes. I would like to renew the offer of the deposition of Albert Feldman.

639 Mr. Robson: "This is an examination before trial held on behalf of the Government—

"held on behalf of the Government by stipulation between counsel. Mr. Wasserman, may we have the
640 usual stipulations waiving filing and signing before any notary, etc.?

"A. Yes.

"Q. Thank you. Mr. Feldman, would you state your full name please?

"A. Albert E. Feldman.

"Q. Thank you. What is your age, Mr. Feldman?

"A. 76 years.

"Q. How long have you lived in New York City?

"A. 75 years.

"Q. Did that include that period from 1920 to 1930?

"A. Yes.

"Q. Now, during the period referred to as Prohibition, were you a bootlegger, and by that I mean were you engaged in the illegal sale or transportation or importation of whiskey or alcoholic beverages?

"A. Yes.

"Q. When did you start in the illicit liquor business or bootlegging?

"A. I don't remember exactly.

641 "Q. Well, approximately?

"A. Probably around 1928 or 1930.

"Q. Did you have any transactions in illegal liquor before that, sir?

"A. No.

"Q. Now, Mr. Feldman, do you recall that prohibition came in around 1920, that is it became illegal to sell or deal in liquor without certain permits at that time?

"A. What time?

"Q. Approximately around 1920?

"A. Yes.

"Q. 1919, 1920; do you remember that?

"A. Yes.

"Q. And about how long after that time did you begin any dealings in liquor or working with anyone who dealt in liquor illegally?

"A. Well, it was about that time.

"Q. About 1920?

"A. Yes.

"Q. Well, then your previous answer that it was around 1928 or 1930 is incorrect, is that right?

"A. No. That's wrong.

"Q. Approximately how many years did you have any connection with the illegal liquor business after you began it?

"A. I should say, oh, about a year or so; two years maybe. I don't remember exactly how long.

"Q. But it could be a year or two years after you started it? Now, were all your dealings in the liquor business in those days illegal, that is in violation of the law?

"A. Yes.

"Q. Do you recall the names of any persons with whom you dealt while you were in the illegal liquor business?

"A. Yes.

"Q. Would you state them, please?

"A. Mannie Kessler, Sweetwood.

"Q. What's his first name, please?

"A. Morris.

"Q. Thank you. Anyone else?

"A. Yes, Simmonette.

"Q. What was his first name?

"A. Roland.

643 "Q. Anyone else?

"A. I don't remember, who else I had dealings with, some various people that I don't remember:

"Q. Did you ever have any dealings with Frank Costello in connection with your illegal liquor business?

"A. Yes.

"Q. Did you ever have any dealings with Edward Costello in connection with your illegal liquor business?

"A. Yes.

"Q. Now, is there anyone else you recall you dealt with in that business?

"A. I wouldn't know unless my memory was refreshed.

"Q. Mr. Feldman, I show you a picture annexed to a sheet which I will have marked Government's Exhibit 8 for identification, and I ask you if you have ever seen that person before?

"A. Yes.

"Q. Your answer is yes?

"A. Yes.

"Q. Who is he?

"A. Frank Costello."

644 Mr. Robson: Will Mr. Williams concede that is a picture of Frank Costello?

Mr. Williams: It looks like it to me.

Mr. Robson: (Continuing reading):

"Q. Mr. Feldman, I show you a picture annexed to a sheet which has been marked Government's Exhibit 9 for identification, and I ask you if you have ever seen the person depicted in that picture before?

"A. Yes.

"Q. Who is he?"

"A. That's Eddie Costello."

May the record indicate that the exhibit identified as Government's Exhibit 9 in this deposition is Government's Exhibit 37 in evidence, a photograph of Edward Costello?

The Court: Very well.

Mr. Robson: (Continuing reading):

645 "Q. Now, are the two men whom you have identified in Government's Exhibits 8 and 9 persons with whom you dealt in the early 1920's in connection with your illegal liquor business?"

"A. You'll have to talk louder. I can't hear you.

"Q. I'll repeat the question: You identified in the two pictures, Government's Exhibits 8 and 9; the two men you referred to as Frank and Eddie Costello when you were enumerating persons you dealt with in the bootlegging business?"

"A. Yes.

"Q. Now, Mr. Feldman, I show you a picture annexed to a sheet which has previously been marked Government's Exhibit 3 for identification, and I ask you if you can identify any of the persons in that picture?"

"A. I recognize two people.

"Q. Who are they, sir?"

"A. Frank Costello (indicating the man at the far upper right holding a golf club)."

May we have a stipulation or concession that the individual described in this exhibit is Frank Costello as identified in Government's Exhibit 4? The same picture?

Mr. Williams: Yes.

646 Mr. Robson: And then there was some colloquy and then the question was repeated. (Continuing reading):

"Q. Now, you testified that you had some illegal liquor dealings with Frank Costello. Could you tell us what dealings you had with him in that connection, please?"

"A. This man Simmonette had turned over to me a thousand cases of Scotch whiskey and asked me to sell them for him. I had no place there to store them, and I knew the Costello boys had a warehouse and trucks. I went to see Frank Costello."

647 "Q. If I may interrupt, where did you go to see him?

"A. I believe it was at Lexington Avenue and 42nd Street where he had his office at the time.

"Q. Is that where the Chrysler Building is now?

"A. Yes.

"Q. What happened when you went to see Frank Costello there?

"A. I asked him if he could store and pick up that liquor that was out in Long Island and he agreed to pick up and store the liquor for me.

"Q. When you say he agreed, you mean that he said in substance that he would do this for you?

"A. Yes.

"Q. Can you tell us the date when this was, Mr. Feldman?

"A. No, I can't tell you the date. It's too far back for me to remember.

"Q. Well, if I may refresh your recollection, do you remember the arrest of a man named Mannie Kessler, whom you referred to previously in 1923?

648 "A. Well, yes, it was around that time, but I couldn't remember the date.

"Q. If I may fix the date of that, Mr. Kessler was indicted on or about June 29, 1923. Was it a little time before that, a long time before that, after that, or what?

"A. No, I couldn't remember the date. I don't remember.

"Q. Well, do you remember that Mr. Kessler, subsequent to his arrest went to trial and was sentenced in December of 1923? Does that help refresh your recollection as to whether this transaction with Costello was before that date?

"A. Yes, it was.

"Q. It was before December, 1923, right?

"A. Yes, I believe it was.

"Q. Now, to return to the transactions: What happened after Mr. Costello said he would store that liquor for you? By the way, what were the terms of your agreement as to selling prices and so on?

"A. The terms were that he was to pick up the liquor and store it for me for a dollar a case, the total of a thousand dollars.

649 "Q. Now, did there come a time after you had that conversation with Mr. Costello when he or men working for him picked up that liquor?

"A. Yes.

"Q. About how long after your conversation with him was that?

"A. Oh, within a week after; just a few days, it was.

"Q. Did you ever have any dealings with Mr. Costello with respect to that same 1000 cases of Scotch that you referred to after it was picked up?

"A. Well, there were no actual transactions of any kind other than that particular consignment of liquor.

"Q. Well, perhaps I didn't make my question clear, but still talking about the same 1000 cases, did you ever have any other dealings with Frank Costello concerning the same 1000 cases.

"A. Yes.

"Q. What were they, please?

"A. After the liquor was stored over in Astoria.

"Q. Where was that, sir?

"A. It was in a garage, I believe.

"Q. Do you know what street it was?

"A. If my memory is right, it was at Halsey Street.

"Q. Did you ever actually see the liquor there in that garage?

650 "A. Yes, because after Costello had picked up the liquor and stored it, I wanted to see it and he gave me the address.

"Q. Do you recall the address he gave you, sir?

"A. No, I remember the house that I went to, but I don't remember the address.

"Q. Does the number 114 Halsey Street refresh your recollection?

"A. What number?

"Q. 1-1-4 Halsey Street or 1-1-7?

"A. I don't remember the number.

"Q. You say that you went to that garage and saw the liquor there?

"A. Yes, I went there and I inquired for Eddie Costello and I was told that he lived there in the house in back of the garage.

"Q. What happened when you got there?

"A. I inquired for Eddie Costello and they pretended that they didn't know who he was and that he did not live there. They asked me to identify myself. There were two women there. When I told them who I was, there was a young man came down from upstairs that I had known, having seen him around and he knew me, and he called me by my first name.

651 "Do you recall his name, sir?

"A. No. I wouldn't know his name; and he told the women in Italian language that I was O.K.; then right after that, he took me out through the back of that house and in through a small door of a brick building, and he showed me the pile of liquor that had been piled up in the garage and told me 'That's the 1000 cases of Scotch that came in from Long Island.' "

• • • • •
 "Q. Mr. Feldman, I show you a sheet of paper with two photographs annexed to it which has been marked Government's Exhibit 10 for identification, and ask you if you can identify the buildings in those two pictures?

"A. Yes.

"Q. What are they?

"A. This is a private dwelling (indicating the picture at the left on Government's Exhibit 10 of a house); and that's where I went to. I was sent to that address, that building.

"Q. You mean where the 1000 cases were?

"A. Yes; and that's where I inquired for Eddie Costello, and after I identified myself—

652 "Q. Well, you've been over that: Would you tell us what is in the picture on the right which is marked Government's Exhibit 10 for identification?

"A. Well, they took me in through this alley in through the back of this garage (indicating the garage depicted on Government's Exhibit 10); so I entered the garage from the back door, not this front door, but a door in the back of that building. I entered into that garage and there I saw the piles of liquor that had come in on the 1000 cases."

.

653 "Q. Now after you made that trip to Halsey Street and saw the 1000 cases of liquor in the garage, did you have any other dealings with Frank Costello with respect to that 1000 cases?

"A. Yes.

654 "Q. What were they?

"A. A couple of days after the liquor was stored, Doc Garner came to me and said that Frank Costello wanted to see me at the office and I went there.

"Q. Was that office at 42nd Street and Lexington Avenue, you referred to before?

"A. Yes.

"Q. What happened then?

"A. He told me he has a customer for the 1000 cases.

"Q. Who told you that?

"A. Frank, and he wanted to know how much I wanted for them, and I told him \$40.00 a case. He said he could sell them and he would be able to pay me in a few days, as soon as they were delivered, to which I agreed; and Frank said that 'I'll be responsible for the money.'

"Q. What happened after that?

"A. Shortly after that I went to see him to get the money.

"Q. How long approximately?

"A. Well, probably three or four days, because I was responsible for the liquor although I didn't pay for it; but I was responsible and had to turn over the money, so I went to Costello to get the money and he told me
655 that he shipped the liquor to Buffalo in a freight car.

"Q. That's Buffalo, New York?

"A. Yes; and he would have the money in a couple of days, and as soon as he had the money, he would pay me. Well, I waited, probably a week, and I went to the office.

"Q. The same office on Lexington Avenue?

"A. Yes; and Doc Garner told me that he got a telegram from Frank, and Frank was in Buffalo, and he wanted me to come to Buffalo right away. He didn't know why; he showed me the telegram. So I went to Buffalo to the address that Garner gave me.

"Q. Was that right after you saw the telegram?

"A. Yes. I left immediately thinking I was to get the money in Buffalo. When I got to Buffalo, I met a couple of strange men at that address, who told me that Frank was at the freight yard and they took me over to the freight yard in a car. There I met Frank.

"Q. Frank Costello?

"A. Frank Costello; and he says: 'Al, I got some bad news. I shipped the thousand cases in that car', and he pointed to the car that was empty.

"Q. You mean the freight car?

"A. The freight car; and he said 'The car came in and the liquor was hijacked;' but he says 'You got nothing
656 to that.' He says 'We know who hijacked it and we're going to make them pay, and that's what I came here for. I'll get the money, and I'll pay you for it. Don't worry,' he says, 'I'll get the money and you will get the money from me. I wanted you to see for yourself that the car was empty when it arrived here.' That's the reason I sent for you.' There was nothing else that I could do and I left that night,

and came back to New York; and I went to Costello's office many times to get the money, and each time I was told that they didn't get paid yet.

"Q. Who told you that, sir?

"A. Frank Costello, also Eddie.

"Q. Who told you?

"A. Frank Costello, also Eddie. That they will get the money and as soon as they got the money, they will pay me for the liquor. I asked them what they sold the liquor for. They told me they sold it for \$50 a case.

"Q. Did Frank Costello tell you that or Eddie?

"A. Eddie, and that they will sure get the money. I won't lose anything; that even if they don't get the money they will pay me; they are responsible to me.

"Q. Did Frank Costello ever tell you anything
657 about paying you when you were at the office?

"A. Did he tell me that? Yes, he did. He promised me a number of times that he would pay me for the liquor which he never did.

"Q. Mr. Feldman, did Frank Costello ever indicate to you that this man, Doc Garner, whom you talked about, worked for him or was associated with him in the liquor business?

"A. Yes.

"Q. Did you ever engage in any other dealings with Frank Costello?

"A. No.

"Q. All this took place before Manny Kessler went to prison, is that right—in 1923?

"A. Yes.

"Q. Can you recall any other incident of an unusual nature involving Frank Costello?

"A. No.

"Q. Can you recall any occasion on which Frank Costello was ever seen by you in possession of a weapon?

"A. Yes.

"Q. When was that?

"A. It was one morning at the Ansonia Hotel.

658 "Q. Now, again, can you fix the time with relation to Manny Kessler's being sent to prison in December of 1923? Was it near that time, before it or after it?

"A. No, it was before he went to prison.

"Q. How long before, approximately?

"A. I wouldn't know, probably a few months or so.

"Q. Not more than a year?

"A. No.

"Q. What happened then?

"A. Well, some dispute about liquor missing, . . .

"Q. Who were the parties to that dispute?

"A. That, Costello had in his warehouse.

"Q. Did that dispute take place in your presence?

"A. Yes.

"Q. And who were the parties to the dispute?

"A. Kessler, Morris Sweetwood, Eddie Costello, Frank Costello and a group of four or five more.

"Q. Where did you say this took place?

"A. In the lobby of the Ansonia Hotel.

"Q. Would you tell us in substance what Mr. Frank Costello said and what Manny Kessler said?

"A. Kessler had accused Frank Costello of having disposed of a quantity of liquor belonging to Kessler.

"Q. You said Frank Costello accused Manny Kessler?

659 "A. No, Kessler accused Costello of having disposed of some liquor that belonged to Kessler.

"Q. Then what did Frank Costello say to that?

"A. He denied it; that he had only delivered the liquor according to the orders that he had from Kessler's office.

"Q. That's your recollection of what Frank said?

"A. Yes. And during the argument there, Kessler told him he was going to hold him responsible for the missing liquor.

"Q. Frank?

"A. Frank Costello. Yes, everything was Frank Cos-

tello. He was the business man. He did all the business. So Frank Costello got pretty excited and he pulled out a small, pearl handled gun, supposedly to shoot him.

"Q. When you say that, what do you mean; did he point it at Mr. Kessler?

"A. He pulled the gun out of his pocket and everybody of the group grabbed him and held him before he even had a chance to point at Kessler. They grabbed him with the gun and yanked him away, and of course, the whole argument then broke up. That was the last I ever heard of it.

660 "Q. In the early part of your testimony, Mr. Feldman, you said you knew that Frank and Ed Costello had trucks and warehouses, etc. for storing liquor. How did you know that?

"A. It was common knowledge amongst all the boys that were dabbling in liquor. Everybody knew it.

"Q. Did you ever see the Costello trucks?

"A. Yes, I saw them several times delivering liquor at Kessler's place of business, 28th Street and 6th Avenue.

"Q. That also was before Kessler was sent to prison in December of 1923?

"A. And his trucks also were delivering liquor and picking up liquor in the office that Kessler had at 27th Street near Seventh Avenue."

661 "Q. Were you associated in some way with Manny Kessler in the liquor business?

"A. No.

"Q. Did you deal with him in the buying and selling of liquor?

"A. I did buy various small lots of liquor from him.

662 "Q. Manny Kessler?

"A. Yes.

"I have no further question."

713 Mr. Robson: The next item would be the statement given by Frank Costello to Special Agent Sullivan which has already been introduced in evidence, and I would like to read it.

714 Mr. Robson: (Reading):

"By Mr. Sullivan:

"Q. Your name is Frank Costello?

"A. Yes.

"Q. Where do you live, Mr. Costello?

"A. 115 Central Park West.

"Q. How long have you lived at that address?

"A. It will be one year this October.

"Q. Have you a telephone at that address?

715 "A. Yes.

"Q. And what is the 'phone number?

"A. Susquehanna 7-1064.

"Q. Going back to 1932, what was your business in 1932?

"A. Well, I have been a betting commissioner at the race track.

"Q. And were you in the same business in 1933?

"A. Yes, sir.

"Q. During that period were you in the liquor business at all?

"A. No.

"Q. You had nothing to do with it?

"A. No.

"Q. Did you have anything to do with the liquor business during the Prohibition era—that is, say, from 1920 to 1933?

"A. Yes.

"Q. During what period of time?

"A. Oh, until about—I will say from 1923 or 1924 until about a year or two before Repeal.

"Q. That would put you in the liquor business along about 1932, as Repeal came through in December, 1933.

716 "A. Was it 1933?

"Q. Yes, December, 1933.

"A. Well, I haven't got the exact dates.

"Q. Where were you operating—around New York?

"A. Yes.

"Q. Do you know John Torrio?

"A. Yes, sir.

"Q. You knew him in Chicago in the old days?

"A. Yes.

"Q. During the period you were in the liquor business, did you have any transactions with Torrio?

"A. No.

"Q. You knew he was in the liquor business?

"A. I didn't know his business entirely, and I could not swear what business he was in.

"Q. Well, you were connected with him in Chicago in the old days.

"A. Just how do you put that—what do you mean by 'connected'?

"Q. Well, I notice here that you got some drafts from Cusick in the old days.

"A. Well, that is not Johnny Torrio.

"Q. Well, at that time he was part of that organization.

717 "A. I don't know anything about Cusick's organization. I did business with Cusick and I don't know anything about the drafts. I might have gotten them—they are far back.

"Q. Do you recall using the name of Frank Williams at that time?

"A. I might have, yes; I think so, for banking purposes."

719 "Q. You knew Zagarino when you were in the liquor business?

"A. Yes.

"Q. Did you ever have any dealings with Frank Zag-arino when you were both in the liquor business?

"A. I had one deal with him in Canada, just an exchange of merchandise. That was many years back.

"Q. Was it after 1930?"

"A. No, I believe it was prior to that—much prior to that.

720 "Q. It didn't involve any of the Melcher goods up in Canada, did it?

"A. No. I believe I had bought some William Penn Scotch, if I am not mistaken, and he wanted some, and I transferred some to him. It was not Scotch—it was William Penn Rye, from the Consolidated Liquor Company."

721 Mr. Robson: I would like to read now a very few questions and answers from Government's Exhibit 14, the transcript of the testimony of Frank Costello before the grand jury in 1939 in this District. First on page 1.

"Q. Mr. Costello, this is a federal grand jury sitting in the Southern District of New York. This is Mr. Young and my name is Doyle. We are assistant U.S. attorneys. We are going to ask you questions; but we want you to know that any answers you may give we will use against you, if necessary. This body may find an indictment on the answers that you give in this room. The only answers that you cannot,—I mean, that you are allowed to refuse to answer is where you feel that that answer will incriminate you in a federal matter. Is that understandable?

"A. Yes, sir.

"Q. Now, do you have any name other than Frank Costello?

"A. Well, I have had Savario, which is my mother's maiden name; which is years back; twenty years, twenty-five years back.

722 "Q. What is your true name?

"A. Costello."

Mr. Robson: Then on page 19 of the second session:

"Q. The only business you ever had in New York was this Midtown Company?

"A. That's right.

"Q. You never had any interest in any bootlegging?

"A. I did a little bootlegging.

"Q. What company did the bootlegging?

"A. That is all way back.

"Q. How far back?

"A. The last time was around 1926.

"Q. No bootlegging since that time?

"A. No.

"Q. What company operated the bootlegging?

"A. No company.

"Q. Just an individual enterprise?

"A. That's right.

"Q. How long were you in bootlegging?

"A. Do you think I should answer that question, going all the way back to 1926?"

Mr. Robson: That is all from this exhibit.

723 At this point, your Honor, I would like to offer in evidence Government's Exhibit 3 for identification, being a transcript of the testimony of Frank Costello before the grand jury of New York County in September of 1943, identified by District Attorney Frank Hogan.

Mr. Williams: I object to this, if the Court please, on the ground that this testimony is clearly tainted by wire-tapping . . .

748 The Court: . . .

Now, I think what we had better do is to have Mr. Robson read the particular part he wants, and after he has finished reading a particular portion, then you make your objection and I will rule upon it.

Mr. Williams: My objection would be, your Honor, that I would object to it all.

The Court: You object to it all?

Mr. Williams: Yes, sir.

The Court: All right.

749 Now, Mr. Robson, I am not going to take it all as such; I am going to take just particular parts of the evidence.

Mr. Robson: I understand, your Honor.

Mr. Williams: I also will object specifically to these particular portions as he reads them if your Honor wishes.

The Court: All right. I think that would be the better way.

Mr. Robson: Reading now from page 577:

"Q. Did O'Connell work for you at any time?

"A. No.

"Q. Did he work for you in the 20's?

"A. Yes.

"Q. In the liquor business?

"A. In the 20's, yes."

Mr. Williams: Have you finished with that particular part?

Mr. Robson: Yes.

Mr. Williams: I object to that, your Honor. And in addition to my general overall objection I object specifically to it because just a few lines ahead of this interrogation on

750 O'Connell, there is a reference to the tap between the defendant and O'Connell, a conversation between the defendant and O'Connell, made by Mr. Hogan as he got into the subject of O'Connell, clearly indicating a tapped conversation between this defendant and O'Connell, and it shows why he is asking the questions.

The Court: Let me look at that.

Mr. Robson: Yes, sir.

Mr. Williams: Well, I will read it to your Honor. I assume on Mr. Robson's copy it is about at page 576, but if I may just read this conversation.

The Court: Yes.

Mr. Williams: Or the question preceding the reference to the tap is as follows:

"Q. Let me read you this conversation with Jim O'Connell and perhaps you can explain it to us:

"Costello: Hello, Jim.

"O'Connell: It is so darn hot, I won't be over.

"Costello: That is all right.

"O'Connell: I got the money for you.

"Costello: How much?

"O'Connell: \$2910. I will see you in the morning
751 at the barbershop. If I receive a call from Jerry
and have to leave early, I will leave it at the shop
for you."

That is a tapped conversation, your Honor.

The Court: What goes on after that?

Mr. Williams: Then there are some questions by Mr. Hogan and I will read them to you.

The Court: Yes.

Mr. Williams: After the tapped conversation which I have just read he continued with his question as follows:

"Q. Now, what would that have reference to?

"A. Maybe at the end of the day, I probably had to collect that \$2000, whatever you call it.

"Q. That is almost \$3000, and you just told us that you did not bet heavily with him.

"A. I can win \$3000 with \$20 bets. Eight bets at \$20 a bet would be \$5000.

"Q. That would be a red-letter day?

"A. That could happen.

752 "Q. Do you remember June 22, 1942, being a red-letter day?

"A. No.

"Q. And the Jerry—"if I receive a call from Jerry"—would that be Jerry Catana?

"A. No.

"Q. What Jerry would that be?

"A. I don't know his last name, but he was affiliated with George Sherman.

"Q. In the bookmaking business?

"A. That is right.

"Q. Did O'Connell work for you at any time?

"A. No.

"Q. Did he work for you in the 20's?

"A. Yes.

"Q. In the liquor business?

"A. In the 20's, yes.

"Q. You are still very friendly with him?

"A. Yes.

"Q. Wasn't he in the Coast Guard at one time?

"A. No. His two sons are Coast Guards.

"Q. No, I mean in the 20's.

"A. No."

755 The Court: Well, you have made a specific objection here because there was this reference to wiretapping with Mr. O'Connell on an entirely different occasion. The only point on which that evidence was offered by Mr. Robson was that Mr. O'Connell was connected with Mr. Costello, and his connection with Mr. Costello concerned bootlegging.

Now, to that extent I suppose Mr. Costello is making an admission that he was in the prohibition era engaged in bootlegging. I do not see how that is in any way related to the wiretaps that you are talking about in that testimony. Therefore, I will take the evidence for what it is worth.

Mr. Robson: The next item is at page 584.

756 "Q. Now, going back a few years, you were very close to Arnold Rothstein, weren't you?

"A. Yes.

"Q. And you gambled with him.

"A. No, I never gambled with him.

"Q. You never gambled with Arnold Rothstein?

"A. No.

"Q. You knew him for a long time?

"A. Yes, I knew him.

"Q. You lent him, money?

"A. Yes.

757 "Q. And you permitted him to discount your notes?

"A. Yes.

"Q. And you regarded him as a friend of yours?

"A. Well, I thought he was, yes.

"Q. In fact, isn't it true, in an affidavit dated July 14, 1942, you said 'that Mr. Rothstein and myself were personal friends for upwards of 25 years'?

"A. Affidavit?

"Q. Yes, in an affidavit submitted in connection with a lawsuit by the Rothmere Mortgage Corporation against yourself?

"A. I never made that affidavit.

"Q. You didn't?

"A. Not that I recall.

"Q. I will show you a copy of the affidavit and see if it doesn't refresh your recollection?

"A. Who did I make this to?

"Q. It was in the proceeding in the Supreme Court in connection with a motion to dismiss the judgment which had obtained I believe by default or something.

"A. I suppose my lawyer made this thing.

"Q. And you signed it?

"A. I must have signed this affidavit, yes. I probably signed it without—

758 "Q. You gave him the facts?

"A. That is true.

"Q. Isn't it true that you were friends, you and Rothstein were friends for a great many years?

"A. Yes.

"Q. Continuing, 'on many occasions Mr. Rothstein would borrow large sums of money from me'; that is equally true?

"A. That is right.

"On other occasions when I had no available cash to lend Mr. Rothstein, he would ask for and I would give him my note, which Mr. Rothstein would discount at a bank or other lending institution and secure the cash he desired', that is true also?

"A. That is true.

"Q. So in the 20's—and we recall he was killed in November of 1928—

"A. 1928, I believe.

"Q. In the 20's you did have quite a bit of money, isn't that so?

"A. Well, I don't know. I might have. I just don't know.

"Q. Well, in this affidavit you said you advanced large sums of money to him. I think there is one advance which is referred to in the suit of \$30,000?

"A. Well, that was not money. I didn't advance him that money.

"Q. You do say in this affidavit that you did lend him large sums of money?

"A. I remember lending him money but that particular note that you have reference to, that was not money. That was an accommodation note that I gave him.

"Q. You state in this affidavit: 'On many occasions Mr. Rothstein would borrow large sums of money from me', and you have told me that is true?

"A. Yes.

"Q. Now, where did you get these large sums of money from?

"A. Where did I get it?

"Q. Yes.

"A. I might have got it bringing a little whiskey in, that is during prohibition isn't it?

"Q. That is true, you were in the bootlegging business, weren't you?

"A. Yes.

"Q. And you did smuggle whiskey into the country?

"A. Yes.

"Q. You testified to that before the Federal Grand jury. I won't have to read it to you because you admit
760 it here.

"A. That is right.

"Q. And you had an office for a long time at 405 Lexington Avenue, isn't that so?

"A. Yes.

"Q. As early as 1925?

"A. That is right.

"Q. And Jim O'Connell was one of your associates at that time, wasn't he?

"A. That is right. He wasn't my associate. He was working for me at the time.

"Q. What was his job?

"A. Well, he was working for me driving a truck, or something, carrying whisky.

"Q. And were you associated with Bill Dwyer at that time?

"A. No.

"Q. You knew him?

"A. Yes.

"Q. He was in the bootlegging business also?

"A. He was, yes.

"Q. And Vanny Higgins—do you recall him?

"A. No, I never knew him.

"Q. You had heard of him?

761 "A. Yes.

"Q. But he wasn't associated with you at any time?

"A. No.

"Q. Did you own some boats at that time?

"A. No.

"Q. You used boats of others?

"A. Well, yes, chartered a boat or something.

"Q. And your income was large in those years, was it not?

"A. Well, I wouldn't say it was large.

"Q. Well now, taking 1927, for example, you reported \$51,000. That is not small, is it?

"A. I didn't report no \$51,000, Mr. Hogan.

"Q. Well, I have looked up your state report, Mr. Costello and I tell you that is the figure on it.

"A. Well, now, I didn't report that at all. They just assessed me and I paid without making a report.

"Q. I guess it is true that you did not pay any income tax from 1929 to 1936, isn't that so?

"A. No, 1932—1931.

"Q. Isn't it true that in 1936 you filed returns for state income tax for the years 1919 to 1936?

"A. Yes, state; yes. That is right.

762 "Q. So that from 1919 until 1936, you paid no state income tax?

"A. That is right.

"Q. Did you pay any federal taxes during those years?

"A. Yes.

"Q. And then, roughly, you approximated your income for each year, isn't that so?

"A. Yes.

"Q. For each of the 17 years; and you paid back penalties on the 1919 tax for 17 years. Now I tell you that your rough approximation of your tax in 1927 was \$51,000 and that, to the best of your recollection in 1936 was what you made in 1927, isn't that so?

"A. We don't take in one year.

"Q. But I am telling you that is the tax you reported for that year?

"A. That is right.

763 "Q. 1927, you reported it as \$51,000; and in 1929 you listed it at \$48,000, is that right; and in 1930, \$35,000. Those are figures that are approximately correct, isn't that so?

"A. Well, I don't know. I just don't remember just what I did with the state, with them figures. If you have the

record there and you have got it from the state department.

I will say, yes."

764 Mr. Robson: Now reading from the bottom of that page:

"Q. Now this letter dated March 5, 1937, written to Mr. Levy, says: Anshus has prepared the New York State income tax returns for Frank Costello, for the years 1919 to 1932 inclusive, and the following is a summary of the income—and you will note that the income reported for those years, the 13 years, totals \$305,000; isn't that right?

"A. Yes.

"Q. Now, would you say that that money was made in the bootlegging business?

"A. No, I wouldn't say exactly.

"Q. Would you say most of it was?

"A. Maybe most of it, yes.

"Q. Did you have any other occupation in those years?

"A. Well, I was doing a little real estate at that time.

"Q. Did you ever make any money in real estate?

"A. Well, made some moneys, yes.

"Q. Not very much was it? Do you recall any particular real estate transaction in which you made
765 any money?

"A. Well, I had bought a building on West End Avenue and 92nd Street.

"Q. Yes.

"A. And I believe I made a little money there.

"Q. How much would you say?

"A. Well, I would say maybe 25,000.

"Q. On the sale of that building?

"A. Yes.

"Q. Did you take it in your name or in the name of a corporation?

"A. Well, I think it was a corporation at the time.

"Q. Do you remember the name of it?

"A. I think it was Koslo.

"Q. You contend on the sale of that property you profited to the extent of \$25,000?

"A. I think so, about twenty or twenty-five thousand dollars. I just don't remember so far back.

"Q. How much did you pay for the property?

"A. I think we paid about 125,000, I believe.

"Q. Who was associated with you in the purchase of it?

"A. I can't think of his name right now.

"Q. How much of the \$125,000 was yours?

766 "A. I had 50 per-cent of it.

"Q. So that would be \$62,500?

"A. Yes. I think we put up about thirty and then we sold it before we even closed.

"Q. Whatever you put up was proceeds of the liquor business, isn't that right?

"A. It might have been gambling or liquor.

"Q. Gambling and liquor?

"A. I can't distinguish money from the liquor."

The Court: Any objection to that?

Mr. Williams: Yes, your Honor.

The Court: On the ground of wiretapping?

Mr. Williams: Yes, sir.

The Court: The same objection heretofore made?

Mr. Williams: Yes, sir.

767 The Court: I see nothing in there that in any way relates to any wiretapping of Mr. Costello's wire, and I overrule the objection to the questions and answers, or to the section just read, and that will be received in evidence.

772

New York, January 7, 1959;
10:30 o'clock a.m.

776 The Court: . . .

I would like to have the whole transcript, too, as part of the record of the trial. I will want to read that whole transcript to see what reference there is to wiretapping in

there as bearing upon these particular parts that you have said are relevant to this case.

Mr. Robson: At this time, if your Honor please, I would like to offer in evidence again, to the extent of those portions which I plan to read, Government's Exhibit 2 776a for identification, which is the transcript of the testimony of Frank Costello in the matter of Thomas A. Aurelio before the Appellate Division, First Department, on October 25, 1943.

777 Mr. Williams: Your Honor, I make the same objection with respect to this testimony that I made heretofore with respect to the grand jury testimony, . . .

779 The Court: . . .

780 I will have to, therefore, pass upon each one of these statements as they are presented. The objection is overruled.

Mr. Robson: . . . (Reading):

"Q. You say that you got the money you loaned Arnold Rothstein from the slot machine business, is that right?

"A. I didn't say where I got it from. You asked me—

"Q. Where did you get it?

"A. Well, I just don't remember. I might have had it for ten years, I don't know.

"Q. Well, let me show you your grand jury testimony on that, at page 586 (showing witness volume).

781 "A. Yes.

"Q. Now, where did you get it?

"A. My testimony is there. I might have had it from a little bootlegging.

"Q. You were in the bootlegging business, weren't you?

"A. I was.

"Q. You smuggled whiskey into the country, didn't you?

"A. Yes.

"Q. Where was your office?

"A. 405 Lexington Avenue.

"Q. Did you own trucks?

"A. I believe we owned some trucks.

"Q. Chartered boats?

"A. Yes.

"Q. And your income was pretty heavy in those years, wasn't it?

"A. Well, it was profitable.

"Q. Did you ever pay any State Income Tax those years?

"A. No, but I have paid it later.

"Q. Well, when did you pay it?

"A. Mr. Hogan, I think you have the record when
782 I made my settlement, for all the back years.

"Q. I will be glad to show it to you. I show you a copy of a letter written by an accounting firm to George M. Levy. Mr. Levy was your attorney at the time?

"A. Yes, sir.

"Q. And I ask if that refreshes your recollection as to the years?

"A. From 1919 to 1932.

"Q. Yes; you paid no State Tax from 1919 to 1932, is that right?

"A. That is right, and paid them all in 1932.

"Q. And what did it amount to? What is the total amount on which you paid tax (showing witness paper)?

"A. Is this the total, 305, is that it? \$305,000.

"Q. Did you pay any Federal Tax for those years?

"A. No, but I also made a settlement with the Federal Government.

"Q. When did you make the settlement with the Federal Government?

"A. In 1932.

"Q. So that from 1919 to 1932 you made no tax payment to the Federal Government or to the State Government?

783 "A. That is right.

"Q. And you were in the bootlegging business in those years?

"A. Yes."

.

784 "Q. You were going to say that you had done some work between 1916 and 1943 other than gambling, bootlegging and slot machines?

"A. Yes.

"Q. What?

"A. Well, I was associated with Harry Horowitz Novelty Company.

"Q. What work did you do with the novelty company of Harry Horowitz?

"A. It was a novel'y company, sold fountain pens, fountain pencils—or pens, rather, and Kewpie Dolls and razor blades.

"Q. Yes.

785 "A. Safety razors, and I worked in there. I packed, sold, acted as sort of a salesman.

"Q. When was this?

"A. Well, I would say from 1917 or 1918 until about 1920."

.

786 Mr. Robson: As I understand it, the exhibit is accepted in evidence to the extent of those portions I have read, and the balance is to remain as part of the record? Is that correct, your Honor?

The Court: The balance is part of the record insofar as Mr. Williams' objection is concerned on the ground of wiretaps, insofar as that is involved.

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789 Mr. Robson: Now, if your Honor please, I have one last piece of evidence—I am sorry, I have one more statement, and that is the statement of the defendant before the State Liquor Authority.

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816 Mr. Robson: (Reading):

"By Mr. Kaitz:

"Q. Do you remember the school you went to?

"Mr. Wolf: Wait a moment. I am going to object to this. I am going to protest against this. It is quite evident to me that this examination is not pertinent to any matter that concerns the Liquor Board Authority, and it is
817 designed to delve into matters of a personal nature of this here witness.

"Mr. Kaitz: These questions, Mr. Wolf, are pertinent to our investigation in that we require answers to the questions put to the witness. The purpose of the investigation hasn't been put to you in full.

"Mr. Wolf: You told me that the purpose of this interrogation was in connection with an application for a license for some concern. You named the concern. The witness is here to give you all the information he has concerning his knowledge of or connection with, with this particular concern or anybody connected with it. If you show me where these personal records going back to his birth, where he was born, or anything at all is connected—

"Mr. Kaitz: I will tell you the nature of the first few questions I will ask, and if you want to advise your client not to answer them, that is all right, but I want to put the questions on the record. It is important for our investigation to get a complete background of the witness so
818 we can establish our case or we can establish we have no case, either one, and for that purpose, we have to get the answers. Now, you may advise your client not to answer them—as you please.

"Mr. Wolf: I brought him voluntarily.

"Mr. Kaitz: I will tell you the type of questions I will ask. I am going to ask about all his residences he can remember, and I am going to ask him about all his employments he can remember. Do you have any objections to those questions?

"Mr. Costello: Yes; I do have objections. I want to stick to the facts.

"Mr. Kaitz: I am building up to the facts and that is usual in an interrogation, Mr. Wolf, as you know."

Now at page 6:

"Q. Can you at this time tell us what type of business you were in?

"A. I don't think that is necessary for me to tell you—I have been in the real estate business.

"Mr. Wolf: Generally, you have been in the real estate business?

"Witness: Yes.

819 "A. (continued) I have been in the real estate business and in the gambling business.

"Mr. Wolf: What else, during Prohibition? You were engaged in bootlegging?

"Witness: Yes."

This is now by Mr. Kaitz:

"Q. What years were you engaged in bootlegging during Prohibition?

"A. From 1923 to 1926.

"Q. Were you in business for yourself?

"A. Yes.

"Q. Did you have any partners?

"A. No.

"Q. Was that business in the nature of an importer or a wholesaler, as I might say, selling to—

"A. Selling to anyone.

"Q. There is a difference. Were you selling to people who sold at retail or were you selling at retail?

"A. No. I sell to individuals.

"Q. You brought whisky into the United States?

"A. That is right.

"Q. From places outside the country?

"A. That is right.

820 "Q. Did you ever have a headquarters during that time?

"A. Yes.

"Q. Can you tell me anybody you dealt with during that period of time?

"A. No; I can't remember. It is too far back."

Now by Mr. Marzullo:

"Q. Where were your headquarters located?

"A. 405 Lexington Avenue."

Then by Mr. Kaitz:

"Q. Did anyone else share that office with you?

"A. No."

Then this question by Mr. Marzullo:

"Q. For how many years were you located at 405 Lexington Avenue?

"A. Three years."

Mr. Marzullo asked this question at page 28:

"Q. When did you first start to sell Whiteley's products prior to Repeal in the United States?

"A. In the years that I was bootlegging.

"Q. What are those years?

"A. Until about '26 or '27, I believe.

"Q. Starting when?

"A. 1923.

821 "Q. From what office did you operate?

"A. 405 Lexington Avenue—where the Chrysler Building is now.

"Q. Did you sell wholesale to other bootleggers or direct to purchasers?

"A. I used to go to Canada, Halifax, and buy and sell it to individuals.

Now by Mr. Kaitz:

"Q. Whom did you speak with up in Canada, do you recall at this time?

"A. I wouldn't even recall. I always had a man go up there and buy for me. There is where we bought King's Ransom, all brands. We never did business direct in Europe.

"Q. Did you make any purchases from the Islands of Miquelon and St. Pierre?

"A. I might have.

"Q. Do you know King Solomon of Boston, or did you know him, I should say?

"A. No.

"Q. Did you ever hear of him?

"A. No; I don't think I have."

Now at page 30:

"Q. A moment ago you said you did business
822 through someone who represented you in Canada.

"A. Yes.

"Q. Who is that person?

"A. He is dead. Fellow named Harry Sancer."

Mr. Williams: How is that spelled?

Mr. Robson: It is spelled here S-a-u-e-e-r (phonetic).

"Was he an American?

"A. Yes; he was an American."

825 Mr. Robson. At this time, your Honor, the Government rests.

829 Mr. Williams: For the purposes of the record, your Honor, I will make the motion to dismiss now, reserve argument until I offer this evidence in the light of your Honor's feeling that it should go in as defensive matter and then renew the motion on the theory that your Honor might wish to take it under—

The Court: All right, that is satisfactory.

830 Mr. Williams: The rules contemplate your Honor could reserve decision and permit evidence to come in and then make your decision at the conclusion.

The Court: All right, I will reserve decision.

853 Mr. Williams: Now, your Honor, there was one line from the Aurelio grand jury testimony which was not read, which I think was relevant to something that was read by Mr. Robson.

Your Honor understands, I am sure, that my objection still runs to this, but in order to complete the context I felt that this particular line which appears, Mr. Robson, at page 108, presumably at the bottom of your page—

Mr. Robson: You referred to the grand jury transcript, didn't you?

Mr. Williams: No, this is the open hearing.

Mr. Robson: Oh, I am sorry. Go ahead.

854. Mr. Williams: 108, your Honor, of the so-called Aurelio testimony in which there were the following questions propounded:

"Q. Now, did you do any work, any other work, from that office to 1943?

"A. Yes.

"Q. Where?

"A. Well, I was in business at Koslo Realty Company.

"Q. When was that?

"A. I have no records here now, probably from '22 to 25."

870 The Court: Anything else?

Both sides rest?

Mr. Robson: Yes, sir.

The Court: The defendant rests?

Mr. Williams: Yes.

The Court: Are there any motions you desire to make now, Mr. Williams?

Mr. Williams: Thank you.

Your Honor, at this time on behalf of the defendant I would like to move for a dismissal of the Government's case but, as I explained to your Honor this morning, I am combining my argument on all of the evidence with this motion for a dismissal, and I thought by proceeding that way I would be serving the Court as well as myself in the economy of time.

199

UNITED STATES OF AMERICA

DECLARATION OF INTENTION

Invalid for all purposes seven years after the date hereof

State of New York,
County of New York, SS:

In the Supreme Court of New York County.

I, FRANK COSTELLO, aged 32 years,
occupation broker, do declare on oath that my personal
description is: Color white, complexion fair, height 5 feet 7 inches,
weight 170 pounds, color of hair brown, color of eyes gray,
other visible distinctive marks none.
I was born in Caserta, Italy
on the 23th day of January, anno Domini 1891; I now reside
at 334 East 108th St, New York City, N. Y.
I emigrated to the United States of America from Naples, Italy
on the vessel unknown; my last
foreign residence was Caserta, Italy; I am married; the name
of my wife is Loretta; she was born at U.S.A.
and now resides at with me.
It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign
prince, potentate, state, or sovereignty, and particularly to Victor Emmanuel III,
King of Italy, of whom I am now a subject;
I arrived at the port of New York in the State of New York on or about the 23th day
of April, anno Domini 1895; I am not an anarchist; I am not a
polygamist nor a believer in the practice of polygamy; and it is my intention to good faith
to become a citizen of the United States of America and to permanently reside therein:
TO WIT my Oath.

Frank Costello
(Original Signature of Declarant)

Subscribed and sworn to before me in the office of the Clerk of said Court
at New York City, N. Y., this 25th day of March,
anno Domini 19 23

[SEAL]

JAMES A. DONEGAN

Clerk of the Supreme Court.

Edward J. Jones, Special Clerk.

(211)

Form 550-01, 7-17
 REFORMATTED NOTICE TO APPLICANTS: It is your responsibility that the form is completed and submitted as instructed.
 FILLED IN. Then take it to the nearest U.S. DEPARTMENT OF LABOR, NATURALIZATION SERVICE OFFICE.

COMMITTEE ON NATURALIZATION
U.S. DEPARTMENT OF LABOR
NATURALIZATION SERVICE

RECORDS EXAMINER

NOTE TO THE APPLICANT: This form is NOT a petition. It is used to obtain essential information which must be furnished by the applicant BEFORE a petition may be filed.

NOTE FOR CLERK: Read the form to the alien or he may fill it in at his leisure.

TO THE ALIEN: Fill in all the blanks in this form. Be sure the information is correct. When completed, take or mail it to the Naturalization Examiner and he will furnish you instructions. Send your Declaration of Intention with this form.

Full name
 Maiden name
 Birth date
 Birth place
 Date of arrival in U.S.
 Date of departure from U.S.

Take or mail this to—

CHIEF NATURALIZATION EXAMINER,
 1913 Tribune Building, 184 Nassau St.,
 New York, N. Y.

I desire to petition for naturalization in the City of New York, State of New York.
 The following information is furnished that you may arrange for my preliminary examination, and that the necessary papers may be sent to the Chief Clerk of Court.

My full, true, and correct name is Frank Costello ✓
Frances Castiglia ✓
 (If you have ever used any other name write that name here)

I have used another name Frances Castiglia
 and that name because Frances Castiglia

The name on my citizenship ticket was Mary Saverio Alton
 My mother's maiden name was Mary Saverio Alton

My present residence is Greystone Hotel 2450 Broadway N.Y.
2450 Broadway New York New York
 My past office address is Rest Castle

My present occupation is Rest Castle

I was born on January 26 1891 at Cosenza Italy
 (Month) (Day) (Year)

(a) The place where I took the ship or train which landed me in the United States was Italy on March 1895
 (Month) (Year)

(b) I landed in the United States at New York City on April 2 1895
 (Month) (Day) (Year)

(c) The name of the ship or railroad on which I came was _____

(d) If by ship: Name of steamship line was _____ I came by passenger
 (airplane) (motor) (cable)

(e) I arrived as (passenger, stevedore, domestic worker, or other) passenger

(f) The person to the United States I was coming to was Louis Castiglia

(g) The place in the United States I was going to was New York City

(h) The names of some of the persons or passengers I traveled with were Mary Saverio Alton
Castiglia and Mary Castiglia

(i) The ticket on which I came to this country of _____

EX-101-112

If you came from or through Canada or Mexico, also fill in items (A) to (F) inclusive.

- (A) The place in Canada where I landed was _____
 (B) The place in Canada from which I entered the United States was _____
 (C) On _____ (Month) _____ (Day) _____ (Year)
 (D) The place where I was examined for admission into the United States was _____
 (E) If not examined, state why, and give the circumstances of your entry.
 (F) The place in Canada where I bought my railroad ticket to come to the United States was _____

5. (a) The date of my Declaration (first paper) is March 25 1915
 (b) It was made in the Superior Court at Neyron, Oregon
 (c) I am married. My (wife's) name is Loretta Castello
 (d) She was born May 2 1899 Neyron, Oregon
 (e) And now resides at 1201 Wheatley, Neyron, Oregon
 (f) We were married on Sept 25 1914
 (g) I have no children. (In the following blanks write name, date and place of birth, and residence of each child.)

born _____ day of _____ 19____ at _____
 resides at _____
 born _____ day of _____ 19____ at _____
 resides at _____
 born _____ day of _____ 19____ at _____
 resides at _____
 born _____ day of _____ 19____ at _____
 resides at _____

6. If not now, have you ever been married? no
 7. The foreign country of which I am now a subject or citizen is Italy
 8. I can not speak English.
 9. (a) I have resided continuously in the United States since April 2 1895
 (b) I have resided continuously in the State where I now live since April 2 1895

10. I have not previously made petition for naturalization (second paper). If so, it was made in the _____
 Court of _____ (City or town) _____ (State) _____ (Month) _____ (Day) _____ (Year)

11. If you wish to have your name changed, give full name you desire.
 12. Give names, occupations, and addresses of the two nearest persons who can vouch for you.

(1st) Harry H. Taylor
 (2nd) Frank A. Jones

If applicant is a married man, give name and address of his wife.
 My home is _____

1776		COURT	ADJUSTMENTS				FINAL HEARING
DATE FILED	FILE NO.		FROM	TO	REASON	EXAMINER	ADJUSTING OFFICER
DATE HEARD	FILE NO.						DATE
							ORIGIN
							EXAMINER
NAME OF DEBTOR			RESULT OF EXAMINATION				
BUS. ADDRESS							
REAL ESTATE							
DAILY			42 34				
FRANK A. Goss							
REAL ESTATE							
WMS Adm'd Arc Jamaica LI			(H) INVS 10-				
HARRY G. EX Successor							
REAL ESTATE							
Huntington LI			(H) INVS 15				
EXHIBIT NO. 2							

U. S. DEPARTMENT OF LABOR
BUREAU OF INVESTIGATION
WASHINGTON, D. C.

US and NYE since April 2, 1935

PAGE 100 Sept 21, 1934 2/7

SEE INTER 6/7

STATEMENT OF PETITIONER AND WITNESSES

1. 1960 1 day of 1960

OFFICE SERIAL NO. 0, 11008 Fees Paid \$ 2.80 U.S.I.R. Stamps \$ 59.00 Cancelled.

THIS INDENTURE made the 22nd day of June, nineteen hundred and twenty five, between KOSLO REALTY CO. INC. a corporation organized under the laws of the State of New York party of the first part, and 666 West End Avenue Corporation, a New York Corporation, party of the second part. WITNESSETH, that the party of the first part, in consideration of One hundred (\$100) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever. ALL that lot or parcel of land, with the buildings and improvements thereon in the Borough of Manhattan, City, County and State of New York, bounded and described as follows: BEGINNING at a point on the northerly side of 92nd Street, distant 80 feet easterly from the corner formed by the intersection of the northerly side of 92nd Street and the easterly side of West End Avenue, formerly 11th Avenue, thence northerly, parallel with West End Avenue, 99 feet 11 inches; thence easterly, parallel with 92nd Street, 20 feet thence northerly, parallel with West End Avenue, 9½ inches to the centre line of the block; thence easterly, along said centre line of the block 20 feet; thence southerly and parallel with West End Avenue, 100 feet 8½ inches to the northerly side of 92nd Street; thence westerly, along the northerly side of 92nd Street, 40 feet to the point or place of beginning. Said premises being known as 259 West 92nd Street, Subject to a first mortgage in the sum of Forty thousand (\$40,000) dollars, now a lien on said premises. Subject to a second mortgage in the sum of Thirty eight thousand (\$38,000) dollars, on which the sum of \$ 35,600 is due, now a lien on said premises. Subject to a purchase money mortgage in the sum of Forty one thousand two hundred thirty (\$41,230) dollars, given as part payment of the consideration herein, bearing even date and intended to be recorded simultaneously herewith. Subject to any state of facts that an accurate survey may show. Subject to covenants and restrictions in prior deeds, if any, TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors and assigns forever. And the party of the first part covenants as follows: FIRST. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same. SECOND. That the party of the second part shall quietly enjoy the said premises. THIRD. That the said premises are free from incumbrances, except as aforesaid. FOURTH. That the party of the first part will execute or procure any further necessary assurance of the title to said premises. FIFTH. That the party of the first part will forever warrant the title to said premises. IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written. KOSLO REALTY CO. INC. by Louis E Felix, President. (Seal KOSLO REALTY CO. INC. Incorporated, 1924, New York) State of New York, County of New York, ss: On the 22 day of June, nineteen hundred and twenty five, before me came Louis E Felix, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York, that he is the President of KOSLO REALTY

1489

375

N Y City, N Y Co. 51 Reg. No. 27033, Kings Co. 22, Reg. No. 7020, Comm exp. Feb. 17, 1927
(Certificate filed Registers Office, New York County RF)(Not subject to recording tax, June
23, 1925 JBD)

Indorsed to be indexed against block 1240 on the land map of the County of New York. Re-
corded preceding at request of N Y Title & Mtge Co. 135 E'way, N Y C. June 23, 1925 at 3
O'clock & 35 Mins P.M.

EXAMINED
M. J.

NOT RECORDED
g m

REGISTER.
7

Office Serial C20365 Fees paid \$2.50. USIR tax stamps \$32. cancelled.

THIS INDENTURE made the first day of December nineteen hundred and twenty four BETWEEN SAMUEL BEILIN AND ANNA BEILIN his wife, both residing at 1155 Longfellow Avenue, Borough of Bronx, County of Bronx, City of New York, party of the first part, and KOSLO REALTY CO INC., a domestic corporation having its office and principal place of business at 217 Broadway, Borough of Manhattan, City of New York, party of the second part: WITNESSETH that the party of the first part in consideration of other good and valuable considerations and one hundred (\$100.00) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part and assigns forever, ALL that certain lot piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows: BEGINNING at a point on the northerly side of Ninety second Street, distant eighty feet easterly from the corner formed by the intersection of the northerly side of Ninety second Street and the easterly side of West End Avenue, formerly Eleventh Avenue; thence northerly parallel with West End Avenue ninety nine feet eleven inches; thence easterly parallel with Ninety second Street twenty feet; thence northerly parallel with West End Avenue nine and one half inches to the centre line of the block; thence easterly along said centre line of the block twenty feet; thence southerly and parallel with West End Avenue one hundred feet eight and one half inches to the northerly side of Ninety second Street; thence westerly along the northerly side of Ninety second Street forty feet to the point or place of beginning. Said premises being also known as 259 West 92nd Street. Being the same premises conveyed to the party of the first part herein, by Max Weiss by deed dated June 26th 1923, and recorded on July 11th 1923, in the office of the Register, County of New York, in liber 33-5 of conveyances page 435. TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises, TO HAVE AND TO HOLD the premises herein granted unto the party of the second part and assigns forever. Subject to any state of facts which an accurate survey would show. Subject to a first mortgage lien upon which there is now unpaid the sum of \$40000.00 and accrued interest thereon. Subject also to a second mortgage lien upon which there is now unpaid the sum of \$36800.00 and accrued interest thereon. AND said parties of the first part covenants as follows: First. That said parties of the first part is seized of the said premises in fee simple and has good right to convey the same. Second. That the party of the second part shall quietly enjoy the said premises. Third. That the said premises are free from incumbrances except as aforesaid. Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises. Fifth. That said parties of the first part will forever warrant the title to said premises. IN WITNESS WHEREOF the party of the first part has hereunto set his hand and seal the day and year first above written. SAMUEL BEILIN (LS) ANNA BEILIN (LS) In presence of M. V. Rosenberg, State of New York County of New York SS: On the second day of December nineteen hundred and twenty four before me came Samuel Beilin and Anna Beilin his wife, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they executed the same. Michael V. Rosenberg, Comr of Deeds N Y Co 315 Reg 25136 term expires Dec 11 1925 (certificate filed Registers Office

Office Serial No. C11784 Fees Paid \$2.50 U.S.I.-S.4-50 cans

This Indenture, made the 12th day of August, nineteen hundred and twenty five, between Mary C. Newell, of the City of Chicago, County of Cook and State of Illinois party of the first part, and Knels Realty Co., Inc., a corporation duly organized under laws of New York State, having its principal office at No. 406 Lexington Avenue, New York City, party of the second part, witnesseth, that the party of the first part, in consideration of the sum of one dollar and other good and valuable consideration, dollars lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever. All that certain lot, piece or parcel of land, situate, lying and being in the Borough of the Bronx, in the City, County and State of New York, which on a certain map entitled "Map of 108 lots, belonging to the Hudson P. Rose Company, known as the Coeter Estate, situated in the Borough of the Bronx, New York City" surveyed by E. A. Holden, C. E. City Surveyor, New York May 26th, 1906, which map was filed as No. 1115A, in the office of the Register of the County of New York, on the 26th day of May A. D. 1906, is known and designated as and by the lot number one hundred and four. (104.) together with the appurtenances and all the estate and rights of the party of the first part in and to said premises. To have and to hold the premises herein granted unto the party of the second part, its successors and assigns forever. And said Mary C. Newell covenants as follows: ...First. That said Mary C. Newell is seized of the said premises in fee simple, and has good right to convey the same. ...Second. That the party of the second part shall quietly enjoy the said premises. ...Third. That the said premises are free from incumbrances; ...Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises. ...Fifth. That said Mary C. Newell will forever warrant

Office Serial No. C11785 Fees Paid \$1.50 U.S. L.S. \$2.50 Lano

This Indenture, made the 12th day of August, nineteen hundred and twenty five, between Minnie R. Newell, of the City of Chicago, County of Cook and State of Illinois party of the first part, and Apple Realty Co., Inc., a corporation duly organized under the laws of New York State, having its principal office at No. 405 Lexington Avenue, New York City, party of the second part, witnesses, that the party of the first part, in consideration of the sum of one dollar and other good and valuable consideration dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever. All those certain lots, pieces or parcels of land, situate, lying and being in the Borough of the Bronx, in the City County and State of New York, which on a certain map entitled "Map of 106 Lots, belonging to the Madison Park Estate Company, known as the Foster Estate, situated in the Borough of the Bronx, New York City" surveyed by A. D. Holder, C. E. City Surveyor, N. Y. May 25th, 1906 which map was filed as No. 1115 A. in the office of the Register of the County of New York, on the 26th day of May, A. D. 1906 are known and designated as and by the lot numbers one hundred and five (105) and one hundred and six (106), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises. To have and to hold the premises herein granted unto the party of the second part, its successors and assigns forever. And said Minnie R. Newell covenants as follows: First, that said Minnie R. Newell is seized of the said premises in fee simple, and has good right to convey the same. Second, That the party of the second part shall quietly enjoy the said premises. Third, That the said premises are free from incumbrances. Fourth, That the party of the first part will execute or procure any further necessary assurance of the title to said premises. Fifth, That said Minnie R. Newell will forever warrant the title to said premises. In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written. Minnie R. Newell (LS). In presence of Thomas A. Kruppner Notary Public (LS) State of Illinois; County of Cook; on the twelfth day of August, nineteen hundred and twenty five before me came Minnie R. Newell to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that she executed the same. Thomas A. Kruppner Notary Public Bronx Public (LS). State of Illinois, Cook

from the records and files in my office; that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the said proof of acknowledgment is genuine..The law of Illinois does not require the impression of the seal of a Notary Public to be filed in the County Clerk's office. In testimony whereof, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago, in the said County, this 12th day of Aug. 1925 Robert M. Sweitzer, County Clerk (LS). Not subject to recording tax. & DA. Indorsed to be indexed against block No. 5339 on the land map of the County of Bronx. Recorded preceding at request of Harold L. Kunetler, Sept 3, 1925 at 2 o'clock 59 mins. P.M.

Edward Cole
Register
ell

AFFIDAVITS OF PETITIONER AND WITNESSES

STATE OF NEW YORK

County of New York

I, the undersigned, being duly sworn, depose and say that the petitioner in the within-entitled proceedings, that he has read the foregoing petition, and knows the contents thereof, and that he is a citizen of the United States of America; that the same is true of his own knowledge, except as to matters therein stated to be based on information and belief, and that as to those matters he believed it to be true.

Frank A. Goss

Real Estate

residing at 5125 Ashcroft Ave. Jamaica, L.I.C. N.Y.

Harry C. Bannister

Real Estate

residing at Huntington, N.Y.

and being solemnly sworn, depose and say that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925

immediately preceding the filing of his petition, since the 1 day of January, 1925, and that he has

sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

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since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

since January 1, 1925, and that he has sworn to the truth of the foregoing statements, and that he is a citizen of the United States of America; that he has personally known the petitioner above mentioned, to have resided in the United States

Frank A. Goss
Harry C. Bannister

[Signature]

MEMORANDUM OF CONTINUANCES

REASONS FOR CONTINUANCE

NAMES OF SUBSTITUTED WITNESSES

Occupation

Residence

Occupation

Residence

2136470
Continuance of Naturalization, Pa.

Issued on the

day of

These witnesses were examined and being qualified after questioning and duly sworn by the Commissioner.

premises. THIRD. That the said premises are free from incumbrances, except as aforesaid. FOURTH. That the party of the first part will execute or procure any further necessary assurance of the title to said premises. FIFTH. That the party of the first part will forever warrant the title to said premises. IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written. KOSLO REALTY CO. INC. by Louis E. Felix, President. (Seal KOSLO REALTY CO. INC. Incorporated, 1924, New York) State of New York, County of New York, ss: On the 22 day of June, nineteen hundred and twenty five, before me came Louis E. Felix, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York, that he is the President of KOSLO REALTY CO. INC. the corporation described in and which executed the foregoing instrument, that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. Bessie Brandel, Comm of Deeds,

to said premises. IN WITNESS WHEREOF the party of the first part has hereunto set his hand and seal the day and year first above written. SAMUEL BEILIN (LS) ANNA BEILIN (LS) In presence of M. V. Rosenberg, State of New York County of New York SS: On the second day of December nineteen hundred and twenty four before me came Samuel Beilin and Anna Beilin his wife, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they executed the same. Michael V. Rosenberg, Comr of Deeds N.Y. Co 315 Reg 25136 term expires Dec 11 1925 (certificate filed Registers Office New York County 17) (Not subject to recording tax Dec 3 1924 BPP). Indorsed to be indexed against block 1240 on the land map of the County of New York, recorded preceding at request of Louis Felix 217 Bay N.Y. C Dec 3 1924 at 1.10 P. M.

Anna Beilin
REGISTER

217

hereto; set his hand and seal the day and year first above written. Mary C. Howell
(LS). In presence of Thomas A. Krippner Notary Public (LS). State of New York; County
of Cook; ss; On the twelfth day of August, nineteen hundred and twenty five, before
me came Mary C. Howell, to me known to be the individual described in, and who executed
the foregoing instrument, and acknowledged that she executed the same. Thomas A.
Krippner Notary Public (LS). State of Illinois; Cook County; ss; I, Robert M. Sweitzer,
County Clerk of the County of Cook, do hereby Certify that I am the lawful custodian
of the official records of Notaries Public of said County and as such officer am
duly authorized to issue certificates of magistracy, that Thomas A. Krippner whose
name is subscribed to the proof of acknowledgment of the annexed instrument, in
writing, was at the time of taking such proof of acknowledgment, an Notary Public
in and for Cook County, duly commissioned, sworn, and acting as such and authorized
to take acknowledgments and proofs of deeds or conveyances of lands, tenements or
hereditaments, in said State of Illinois and to administer oaths; all of which appears

Office Serial No. C11785 fees Paid \$2.50 U.S.I.R.S. \$3.50 and

This indenture, made the 12th day of August, nineteen hundred and twenty five, between Minnie R. Newell, of the City of Chicago, County of Cook and State of Illinois party of the first part, and Apple Realty Co., Inc., a corporation duly organized under the laws of New York State, having its principal office at No. 405 Lexington Avenue, New York City, party of the second part, witnesseth, that the party of the first part, in consideration of the sum of one dollar and other good and valuable consideration dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever, All those certain lots, pieces or parcels of land, situate, lying and being in the Borough of the Bronx, in the City County and State of New York, which on a certain map entitled "Map of 100 lots, belonging to the Madison P. Rose Company, known as the Foster Estate, situated in the Borough of the Bronx, New York City" surveyed by A. D. Holder, C. E. City Surveyor, N. Y. May 25th, 1906 which map was filed as No. 1115 A. in the office of the Register of the County of New York, on the 26th day of May, A. D. 1906 are known and designated as and by the lot numbers one hundred and five (105) and one hundred and six (106), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises. To have and to hold the premises herein granted unto the party of the second part, its successors and assigns forever. And said Minnie R. Newell covenants as follows:.. First, that said Minnie R. Newell is seized of the said premises in fee simple, and has good right to convey the same. Second, That the party of the second part shall quietly enjoy the said premises. Third, That the said premises are free from incumbrances. Fourth, That the party of the first part will execute or procure any further necessary assurance of the title to said premises. Fifth, That said Minnie R. Newell will forever warrant the title to said premises. In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written. Minnie R. Newell (LS). In presence of Thomas A. Krupner Notary Public (LS) State of Illinois; County of Cook; on the twelfth day of August, nineteen hundred and twenty five before me came Minnie R. Newell to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that she executed the same... Thomas A. Krupner Notary Public Bronx Public (LS). State of Illinois, Cook

County; ss: I, Robert M. Sweltzer, County Clerk of the County of Cook, do hereby certify that I am the lawful custodian of the official records of Notaries Public of said County and as such officer am duly authorized to issue certificates of magistracy, that Thomas A. Krippner whose name is subscribed to the proof of acknowledgment of the annexed instrument, in writing, was at the time of taking such proof of acknowledgment a Notary Public in and for Cook County, duly commissioned, sworn, and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of land, tenements or hereditaments, in said State of Illinois, and to administer oaths; all of which appears from the records and files in my office, that I am well acquainted with the handwriting of said Notary and verify believe that the signature to the said proof of acknowledgment is genuine. The law of Illinois does not require the impression of the seal of a Notary Public to be filed in the County Clerk's Office. In Testimony Whereof, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago, in the said County this 12th day of Aug. 1925. Robert M. Sweltzer, County Clerk (LS). Not subject to recording tax. \$DM. Indexed to be indexed against block No. 5339 on the land map of the County of Bronx. Recorded preceding at request of Harold L. Kanstler, Sept 2, 1925 at 2 o'clock 59 mins. P.M.

EXA

Jan

George J. ...
Register

Office Serial No C15231 Fees Paid \$2.50 N.Y.C. \$32.50 paid.

THIS INSTRUMENT, made the 26th day of October, nineteen hundred and twenty five Between Claire Building Corporation, a corporation organized under the laws of the State of New York, party of the first part and Koolo Realty Co Inc, a domestic corporation having its office and principal place of business at 217 Broadway, Borough of Manhattan, City of New York, party of the second part, WITNESSETH that the party of the first part in consideration of other good and valuable considerations and one hundred (\$100.00) dollars lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part its successors, and assigns forever all that certain lot, piece or parcel of land situate lying and being in the Borough and County of Bronx City and State of New York known and designated on a certain map entitled Map of Highbridgeville, in the Town of West Farms County of Westchester New York, dated Westchester February 25, 1851, by Andrew Findlay, Surveyor, and filed in Westchester County on July 3, 1851 as Map No 147, as part of lot No 41 also all that portion of land formerly lying in the bed of Bremer Avenue now closed adjoining said lot No 41 on the west thereof bounded and described as follows: Beginning at a point on the easterly side of Nelson Avenue distant 100.27 feet southerly from the corner formed by the intersection of the easterly side of Nelson Avenue and the southerly side of West 167th Street said point being a line in continuation of the division line between lots 41 and 42 as shown on said map as prolonged to the easterly side of Nelson Avenue running thence southerly along the easterly side of Nelson Avenue 100.28 feet to a point in the easterly side of Nelson Avenue where the division line between lots Nos 40 and 41 if prolonged would intersect the same thence easterly along said line as prolonged and along the division line between lots Nos 40 and 41, 111.41 feet

thence northerly at right angles or nearly so to said last mentioned course
100 feet to the division line between lots Nos. 41 and 42 as shown on said map
and thence westerly along said division line and a line in prolongation of the
same 104.02 feet to the easterly side of Nelson Avenue at the point or place
of beginning be the said several distances and dimensions more or less.. together
with the appurtenances and all estate and rights of the party of the first part
in and to said premises.. TO HAVE AND TO HOLD the premises herein granted unto
the part of the second part its successors and assigns forever. The party of the
second part has this day executed and delivered to the party of the first part
herein a purchase money mortgage in the sum of \$30,000.00 covering the above
described premises and intended to be recorded simultaneously herewith. And the
party of the first part covenants as follows: First. That the party of the first
part is seized of the said premises in fee simple and has good right to convey the
same. Second. That the party of the second part shall quietly enjoy said premises.
Third. That said premises are free from incumbrances, except as aforesaid.. Fourth
That the party of the first part will execute or procure any further necessary
assurance of the title to said premises.. Fifth. That the party of the first part
will forever warrant the title to said premises IN WITNESS WHEREOF the party
of the first part has caused its corporate seal to be hereunto affixed and
these presents to be signed by its duly authorized officer the day and year first
above written. Claire Building Corporation by A. Blumenthal Pres. (Corporate
Seal Claire Building Corporation New York 1921) State of New York County of New
York ss On the 26th day of October nineteen hundred and twenty five, before
me came Adolph Blumenthal to me known who being by me duly sworn did depose and
say that he resides in Borough of Manhattan City of New York, that he is President
of Claire Building Corporation, the corporation described in and which executed
the foregoing instrument that he knows seal of said corporation that seal affixed
to said instrument is such corporate seal that it was so affixed by order of
board of Directors of said corporation that he signed his name thereto by like
order. Michael V. Rosenberg, Comm of Deeds Bx Clks No 43 Reg. No 3056, Term exp
Dec 11, 1925 Cert Filed. Not subject to recording tax. WDA. Indexed to be indexed
against Block No. 2513.. on the land map of the County of Bronx recorded
preceding at request of Michael V. Rosenberg, Oct 24, 1925 at 11 O'Clock and 10
nine A.M.

Edward Poling

Office Serial No C15232 Fees Paid \$2.50 U.S.I.R.S. \$45.00 same.

THIS INDENTURE made the 26 day of October, nineteen hundred and twenty five, between Claire Building Corporation, a corporation organized under the laws of the State of New York party of the first part and Koslo Realty Co Inc, a domestic corporation, having its office and principal place of business at 217 Broadway, Borough of Manhattan City of New York, party of the second part, WITNESSETH that the party of the first part in consideration of other good and valuable considerations and one hundred (\$100.00) dollars lawful money of the United States paid by the party of the second part does hereby grant and release unto the party of the second part its successors and assigns forever, all that plot of land in the Borough of Bronx City of New York bounded and described as follows: -- Beginning at the corner formed by the intersection of the easterly side of Nelson Avenue with the southerly side of West one hundred and sixty seventh Street running thence southerly along the easterly side of Nelson Avenue one hundred and twenty seven one hundredths feet to a point therein intersected by a line in prolongation of the division line between lots 41 and 42 as shown on a certain map entitled Map of Uxbridgeville in the Town of West Farms County of Westchester, New York dated Westchester February 25, 1851, by Andrew Findlay, Surveyor and filed in Westchester County on July 3, 1851, Map No 147, thence easterly along said line as prolonged and along the said division line between lots 41 and 42 on said map one hundred and seven and forty one one hundredths feet thence northerly at right angles to the southerly side of West one hundred and sixty seventh Street one hundred feet to the southerly side of West one hundred and sixty seventh Street thence westerly along the said southerly side of West one hundred and sixty seventh Street, one hundred feet to the corner aforesaid at the point or place of beginning... together with the appurtenances and all estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the premises herein granted unto the party of the second part its successors and assigns forever, the party of the second part has this day executed and delivered to the party of the first part herein a purchase money mortgage in the sum of \$40,000.00 covering the above described premises and intended to be recorded simultaneously herewith, and the party of the first part covenants as follows

UNIFORM FICHE 11.
Mortgage. (N.Y. Co. Reg. M 2-Special-New Form.)

OFFICE SERIAL NO. M 17791

FEES PAID \$ 4.90

THIS MORTGAGE, made the 22nd day of June nineteen hundred and twenty five between 666 WEST END AVENUE CORPORATION, a New York corporation

and KOSLO REALTY CO. INC. a New York corporation

the mortgagee.

WITNESSETH, that to secure the payment of an indebtedness in the sum of Forty one thousand two hundred thirty (\$41,230.) dollars,

lawful money of the United States, to be paid on November 2, 1925, with interest thereon at the rate of six per cent per annum, payable quarter-annually, beginning with the day of September, 1925 according to a certain bond or obligation bearing even date herewith, the mortgagee here- by mortgages to the mortgagee, ALL that lot of parcel of land, with the and improvements thereon, in the Borough of Manhattan, City, County and State of New York, bounded and described as follows: BEGINNING at a point on the northerly side of 92nd Street distant 80 feet easterly from the corner formed by the intersection of the north- erly side of 92nd Street and the easterly side of West End Avenue, formerly 11th Avenue; thence northerly, parallel with West End Avenue, 99 feet 11 inches; thence easterly, par- allel with 92nd Street, 20 feet; thence northerly, parallel with West End Avenue 9 1/2 inches to the centre line of the block; thence easterly, along said centre line of the block, 20 feet; thence southerly and parallel with West End Avenue, 100 feet 8 1/2 inches to the northerly side of 92nd Street; thence westerly, along the northerly side of 92nd Street, 40 feet to the point or place of beginning. Said premises being known as 259 West 92nd Street. The mortgagor or then owner of the premises shall have the right and option to pay off the said mortgage at any time prior to its due date on ten days notice in writ- ing to the mortgagee. This is a purchase money mortgage, given to secure a part of the consideration for said premises, as evidenced by deed bearing even date, and intended to be recorded simultaneously herewith.

Official Serial Number M 17791
Discharged MORTGAGE FILE DEC 24 1925
by a certificate recorded in Liber 17791
of the County of New York

James Mathews

179

Corporation New York 1921) State of New York County of New York ss On the 26 day
of October nineteen hundred and twenty five before me Jane Adolph Blumenthal,
to me known who being by me duly sworn did depose and say that he resides in
borough of Manhattan New York City, that he is President of Claire Building
Corporation the corporation described in and which executed the foregoing
instrument that he knows seal of said corporation that seal affixed to said
instrument is such corporate seal that it was so affixed by order of board of
directors of said corporation that he signed his name thereto by like order.
Michael V. Rosenberg, Comm. of Deeds, Ex Ciks No 43 Reg. No 3056 Form exp Dec. 11.
Cert. Filed. Not subject to recording tax. WDA. Indorsed to be indexed against
Plot No. 2515.. On the land map of the County of Bronx Recorded preceding at
request of Michael V. Rosenberg, Oct 29, 1925 at 11 O'Clock and 10 mins A.M.

EXAMINED
2m.

Edward Polak
Register
OS

CITY OF NEW YORK, COUNTY OF NEW YORK, ss.
 I, ARTHUR D. WATSON, County Clerk and Clerk of the Supreme Court, New York County, do hereby certify that I
 have a copy of the original thereof filed in my office and that I have a true and correct copy
 of the whole thereof. IN WITNESS WHEREOF I have hereunto set my hand and official seal at
 New York City, New York, this 25th day of FEB 25 1953
 ARTHUR D. WATSON
 COUNTY CLERK AND CLERK OF THE SUPREME COURT, NEW YORK COUNTY

STATE OF NEW YORK—OFFICE OF THE SECRETARY OF STATE
 CORPORATION BUREAU.

ALBANY, New York, 1954

Received from KOBLO REALTY CO., INC.

Ten Dollars.

in payment of tax under section 180 of the Tax Law, as follows: 1.20 of 1 per cent on

\$ 8000.00 consisting of 80 shares per value \$ 100.00 each, \$ 10.00

cents per share on shares without per value, \$

JAMES A. HAMILTON, Secretary of State.

By

Cashier

GOVERNMENT'S
 EXHIBIT,
 U. S. Dist. Court
 S. D. of N. Y.
 JAN 5

CERTIFICATE OF INCORPORATION

- of -

KOSLO REALTY CO., INC.

(Incorporated under Article II of the Stock Corporation Law)

The purpose for which the corporation is formed

is to carry on the business of a Stock Corporation

as provided in the following articles:

Article I: The name of the corporation shall be

KOSLO REALTY CO., INC.

Article 2: The purposes for which it is to be formed are as follows:

To conduct a general real estate business; to purchase, lease, sell, exchange or otherwise acquire and dispose of real property, improved or unimproved, and lands, or any interest therein; to erect, construct and alter houses, buildings or works of every description on any land of the company, or upon any other lands, and to rebuild, enlarge, alter and improve existing houses, buildings or works thereon; to mortgage or otherwise dispose of lands, houses, buildings and other property of the company; to loan upon the property of the corporation and to take mortgages and assignments of mortgages on the same, and to loan out money of the corporation upon bond and mortgage, and generally to conduct the business of the improvement and development of real property and to further carry on the business of a realty company.

To purchase real estate, make and purchase materials for the construction of buildings, erection of buildings, own, manage, operate and lease and sell buildings, to tract for the construction, alteration, improvement, and destruction of buildings of every kind and description.

v R

and generally to carry on the business of builders, decorators, wreckers, dealers in new and second-hand building materials and general contractors; to manufacture, purchase, hire or otherwise acquire, own, hold, use and dispose of engines, trucks and all other appliances and materials necessary or desirable in carrying on its business.

To transact a general real estate agency and brokerage business including the management of estates; to act as agent, broker and attorney in fact for any person, estate or corporation, buying, selling and dealing in real estate and any and every estate and interest therein, and other personal property whatsoever.

To manufacture, purchase or otherwise acquire, to hold, pledge, sell and deal in products, materials, goods, wares and merchandise and personal property, accepting bills of exchange of whatever kind, nature and description; and to receive, purchase, lease, construct and operate factories, warehouses and stores and other structures.

To buy or otherwise acquire any inventions, improvements, processes, trade marks and copyrights, and any letters patent, designs, trade names of the United States or other countries, and to use, improve and develop and sell and lease patents and all rights in respect to the same or any of them.

To buy, lease or otherwise acquire the whole or any part of the business, and will and assets of any person, firm or corporation engaged in a business of the same general character as that for which this corporation is organized.

To purchase, sell, hold and dispose of the stocks, bonds, debentures or other securities of any corporation, domestic or foreign, and issue in exchange therefor, its stocks or bonds or other obligations, and while owner of any

GR.

such stock, to possess and exercise in respect thereof the rights, powers and privileges of the individual owner or holders thereof, and to exercise any and all other powers thereon.

To conduct any and all of its business and to do one or more of the acts and things herein set forth for purposes, in any of the states, territories or lands of the United States, or in any foreign country and the said corporation may hold, purchase, receive, convey or dispose of real or personal property (including choses in action) of every kind, but of other states than the State of New York; but the corporation shall do no act or thing forbidden by law to a corporation organized under the Stock Corporation Law of the State of New York.

Article. The amount of the capital stock to Five Thousand (\$5,000) Dollars, is authorized.

Article. The officers and directors of the corporation shall be elected by the stockholders at the annual meeting of the corporation.

NOTE: The names and post office addresses of the subscribers to this certificate, and a statement of the number of shares which each agreed to take in the corporation, are as follows:

NAME	RESIDENCE	NO. OF SHARES
John A. Doe	WATER	1
John Doe	WATER	1
John Doe	WATER	1

NOTE: All of the subscribers to this certificate are of full age, and all of them are citizens of the United States, and all of them are residents of the State of New York, and all of them are directors or officers of the corporation. The parties herein have duly executed this certificate in duplicate, this 31st day of October, 1904.

John A. Doe
John Doe
John Doe

The undersigned, being the subscribers to the above certificate, do hereby certify that the names and addresses of the subscribers, and the number of shares which each agreed to take, are as stated in the foregoing table, and that they have duly executed this certificate in duplicate, this 31st day of October, 1904.

John A. Doe

SR

Printed by the
 New York, New York
 John A. Doe & Co. No. 100 N. 10th St.
 N. Y. Co. No. 100 N. 10th St.
 John A. Doe & Co. No. 100 N. 10th St.
 New York, N. Y.

REC-20-55 00103 • • • -T I 6 M

STUD No. 3539
PAGES 1
TOTAL 1472
FEB 25 1955

COPIES 1
FEB 25 1955

6R

Urmie Matthews

2313722

OFFICE SERIAL NO. 3 2854 FEE PAID 82.00

KNOW ALL MEN BY THESE PRESENTS That Koslo Realty Co. Inc a Domestic Corporation, does hereby certify That a certain Indenture of Mortgage bearing date the 23rd day of June 1935 made and executed by 536 West End Avenue Corporation to it, to secure payment of the principal sum of Forty One Thousand Two Hundred and Thirty (41,270.00) Dollars and interest and duly Recorded in the Office of the Register of the County of New York in Liber 353 Mortgages page 179 on the 23rd day of June 1935, IS PAID AND DO hereby consent that the same be discharged of Record. Dated the 31st day of December 1935, Koslo Realty Co. Inc., By Frank Costello, President, In presence of Louis E. Foley. City & County of New York 33.

On this 22nd Day of December 1925, before me personally came Frank Costello, to me known and who being by me duly sworn did depose and say that he Resides in the Borough of Queens City of New York; that he is the President of the Koslo Realty Co. Inc., the corporation described in and which executed the foregoing instrument that he knows the seal of said corporation; that the seal affixed to said instrument is such seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order Isadore A. Rabinow.. Commissioner of Deeds N.Y. Co. Clerks No. 65 Comm Expires 3/2/27. State of New York County of New York City of New York SS.: I, James A. Donegan, Clerk of the County of New York and also Clerk of the Supreme Court in and for said County DO HEREBY CERTIFY That said Court is a Court of Record having by law a seal That Isadore A. Rabinow whose name is subscribed to the Certificate of proof of acknowledgment of the Annexed instrument, was at the time of taking the same a Commissioner of Deeds in and for said City and County duly commissioned and sworn and qualified to act as such that as such Commissioner of Deeds he was duly authorized by the laws of the State of New York to administer oaths and affirmations to take affidavits and certify the acknowledgment and proof of Deeds and other written instruments to be read in evidence or Recorded in this State and Further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that his signature to such proof or acknowledgment is genuine IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court at the City of New York in the County of New York this 24, Day of Dec 1925, James A. Donegan. Clerk (LS) RECORDED Preceding Dec 24, 1925 at 12.45

EXAMINED

Ann M. MacLeus

REGISTER

TOGETHER with all fixtures and articles of personal property, now or hereafter attached to, or used in connection with, the premises, all of which are covered by this mortgage.

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for thirty days, or after default in the payment of any tax, water rate or assessment for thirty days after notice and demand.
5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.
7. That the mortgagor within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on this mortgage.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That in case of a sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.
11. That the whole of said principal sum shall become due at the option of the mortgagee after default for thirty days after notice and demand in the payment of any installment of any assessment for local improvement heretofore or hereafter laid, which is or may become payable in annual installments, and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installments be not due and payable at the time of such notice and demand; and also that the whole of said principal sum shall become due at the option of the mortgagee, upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises.
12. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the land requiring the payment of the mortgage debt. If such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.
13. That the holder of this mortgage, in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for the debt), to the appointment of a receiver of the rents and profits of said premises; and in the event of any default in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.
14. If any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the holder of this mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this mortgage for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage and by the bond which it secures. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

In presence of

666 West End Avenue Corporation,

by Paul P. Gettinger, President

(Seal: 666 WEST END AVENUE CORPORATION, Incorporated, 1925 New York)

State of
County of

On the
before me came

ss.:
day of

, nineteen hundred and

to be the individual described in, and who executed, the foregoing instrument, and acknowledged that

, to me known
executed the same.

State of New York
County of New York

ss.:

Office Serial No. C16914 Fees paid \$2.50

This indenture made the 15th day of July, 1916 between Moslo Realty Co. Inc. a corporation organized under the laws of State of New York, party of first part and R.G. & F. Construction Corporation a domestic corporation having its office and principal place of business at 2 East 167th Street, Borough of Bronx, City of New York, party of second part. Witnesseth that party of the first part in consideration of other good and valuable considerations and one hundred (\$100) dollars lawful money of United States paid by party of second part, does hereby grant and release unto party of second part, its successors and assigns forever, all that lot piece or parcel of land with the buildings and improvements thereon in the Borough and county of Bronx, City and State of New York, known and designated on certain map entitled "Map of Highbridgeville in Town of West Farms, county of Westchester, New York" dated Westchester February 25, 1851, by Andrew Findlay, surveyor and filed in Westchester county on July 3, 1851 as Map no. 147 as part of lot no. 41 and also all that portion of land formerly lying in the bed of Bremer Avenue now closed, adjoining said lot no. 41 on the west thereof, bounded and described as follows. Beginning at point on easterly side of Nelson Avenue, distant 100.27 feet southerly from corner formed by intersection of easterly side of Nelson Avenue and southerly side of West 167th Street, said point being a line in continuation of the division line between lots 41 and 42 as shown in said map as prolonged to easterly side of Nelson Avenue, running thence southerly along easterly side of Nelson Avenue, 100.28 feet to point in easterly side of Nelson Avenue where the division line between lots nos. 40 and 41 if prolonged would intersect the same, thence easterly along said line as prolonged and along division line between lots nos. 40 and 41, 111.41 feet, thence northerly at right angles or nearly so to said last mentioned course 100 feet to division line between lots nos. 41 and 42 as shown on said map and thence westerly along said division line and a line in prolongation of same 104.02 feet to easterly side of Nelson Avenue at the point or place of beginning, be the said several distances and dimensions more or less. Together with buildings and improvements thereon erected. Said premises being also known as and by street Nos. 114-46 Nelson Avenue. Together with appurtenances and all estate and rights of party of first part in and to said premises. To have and to hold the premises herein granted unto party of second

Fifth. That party of first part will forever warrant the title to said premises. In witness whereof the party of first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written. Koslo Realty Co. Inc. by Samuel Beilin, Secretary (Corporate seal, 1924, N.Y. Koslo Realty Co. Inc.) State and County of New York, ss. On the 15th day of July, 1926 before me came Samuel Beilin to me known who being by me duly sworn did depose and say that he resides in Boro of Bronx, New York City, that he is the Secretary of Koslo Realty Co. Inc. the corporation described in and which executed the foregoing instrument, that he knows seal of said corporation that seal affixed to said instrument is such corporate seal, that it was so affixed by order of board of directors of said corporation, and that he signed his name thereto by like order. Michael V. Rosenberg, Comm. of Deeds, N.Y.C. Bronx Co. Reg. 25022. Term exp. March 16, 1928. Cert filed. Not subject to recording tax WDA. Indorsed to be indexed against block 2513, lot Pt. 58 on land map of county of Bronx. Recorded proceeding at request of Morris Grossman. September 4, 1926 at 9 o'clock and 56 mins. A.M.

Louis A. Schoffel

Examined ..F.G.

Register..F.G.

Office Serial No-C-14578--Fees paid \$2.50

This indenture made the 15th day of July nineteen hundred and twenty-six between KOSLO HEALTHY CO INC a corporation organized under the laws of the State of New York party of the first part and R.G. & F Construction Corporation a domestic corporation having its office and principal place of business at 2 East 167th Street Borough of Bronx City of New York party of the second part-witnesseth that the party of the first part in consideration of other good and valuable consideration and One hundred (\$100.00) dollars lawful money of the United States paid by the party of the second part does hereby grant and release unto the party of the second part its successors and assigns forever- All that certain plot piece or parcel of land situate lying and being in the Borough and County of the Bronx, City and State of New York bounded and described as follows- Beginning at the corner formed by the intersection of the southerly side of East 167th Street with the easterly side of Nelson Avenue and running thence southerly along the easterly side of Nelson Avenue one hundred and twenty-seven one-hundredths feet to a point therein intersected by a line in prolongation of the division line between lots 41 and 42 as shown on a certain map entitled "Map of Highbridgeville, in the Town of West Farms County of Westchester New York" dated Westchester February 25, 1851 by Andrew Findlay Surveyor and filed in Westchester County Records July 8, 1851 as Map No-417 thence easterly along said line as prolonged and along the said division line between lots 41 and 42 on said map one hundred and seven and forty-

one one hundredths feet; thence northerly at right angles to the southerly side of East one hundred and sixty-seventh Street one hundred feet to the southerly side of East One hundred and sixty-seventh Street; thence westerly along the said southerly side of East One hundred and sixty-seventh Street one hundred feet to the corner aforesaid at the point or place of beginning--together with the buildings and improvements thereon erected--said premises being also known as and by the street Nos-1150-52 Nelson Avenue. together with the appurtenances and all the estate and rights of the party of the first part in and to said premises--do have and to hold the premises herein granted unto the party of the second part its successors and assigns forever- Subject to any state of facts that an accurate survey would show-Subject to present leases lettings and tenancies-Subject to a first mortgage lien in the sum of \$150,000 and accrued interest thereon-Subject also to a second mortgage lien originally in the sum of \$40,000 but which has been reduced by payments to the sum of \$22,000 and accrued interest thereon. And the party of the first part covenants as follows- First-That the party of the first part is seized of the said premises in fee simple and has good right to convey the same-Second-That the party of the second part shall quietly enjoy the said premises-Third-That the said premises are free from incumbrances except as aforesaid-Fourth-That the party of the first part will execute or procure any further necessary assurance of the title to said premises-Fifth-That the party of the first part will forever warrant the title to said premises-In witness whereof the party of the first part will forever warrant the title to said premises-In witness whereof the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written--KOSLO REALTY CO INC-by- Samuel Boillin- Secretary--(Seal Koslo Realty Co Inc incorporated-1924- New York) State of New York County of New York--ss- On the 15th day of July nineteen hundred and twenty-six before me came Samuel Boillin to me known who being by me duly sworn did depose and say that he resides in Borough of Bronx New York City that he is the secretary of Koslo Realty Co Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order-- Michael V Rosenberg--Ex Co No 88-28022 Term exp Nov 16/1928-Cert Filed Not subject to recording

Office Serial No-C-11875--Jens paid 62/80

This indenture made the 22nd day of June nineteen hundred and twenty-six between
KOSLO REALTY CO INC a domestic corporation having its principal place of business at
405 Lexington Avenue Borough of Manhattan City of New York party of the first
part and ROSENBLUM REALTY CORPORATION a domestic corporation having its principal
place of business at 1354 Fifth Avenue New York City party of the second part-

witnesseth that the party of the first part in consideration of One hundred (\$100.00) dollars lawful money of the United States and other valuable considerations paid by the party of the second part does hereby grant and release unto the party of the second part its successors and assigns forever--Parcel A--All that certain lot piece or parcel of land situate lying and being in the Borough of Bronx in the City County and State of New York which on a certain map entitled "Map of 108 lots belonging to the Hudson F. Rose Company known as the Coster Estate, situated in the Borough of Bronx New York City" surveyed by E.H. Holden C.E. City Surveyor New York May 25th, 1906 which map was filed as No-1115A, in the office of the Register of the County of New York on the 26th day of May A.D. 1906 is known and designated as and by the lot number One hundred and four (104) Parcel--B--All those certain lots pieces or parcels of land situate lying and being in the Borough of Bronx in the City County and State of New York which on a certain map entitled "Map of 108 lots belonging to the Hudson F. Rose Company known as the Coster Estate situated in the Borough of the Bronx New York City" surveyed by E.H. Holden C.E. City Surveyor N.Y. May 25th, 1906 which map was filed as No-1115A in the Office of the Register of the County of New York on the 26th day of May A.D. 1906 are known and designated as and by lot numbers One hundred and five (105) and one hundred and six (106)-Subject to any assessment and assessments which may have been placed or may have become liens against the above described premises on or after May 8th, 1926- Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises To have and to hold the premises herein granted unto the party of the second part its successors and assigns forever- And said Koele Realty Co. Inc covenants as follows- First-That said party of the first part seised of the said premises in fee simple and in good right to convey the same- Second-That the party of the second part shall quietly enjoy the said premises- Third-That the said premises are free from incumbrances-Fourth-That the party of the first part will execute or procure any further necessary assurance of the title to said premises-Fifth-That the said party of the first part will forever warrant the title to the said premises-In witness whereof the party of the first part has hereunto set its hand and seal the day and year first above written--Koele Realty Co. Inc- by Samuel Beilin -Pres(Said Koele Realty Co. Inc-incorporated 1924-New York) In presence of Martin W Frank-State of New York County of Bronx-- On the 22nd day of June

State of New York
County of New York

On the 22nd day of June
before me came Paul P. Gettinger,
did depose and say that he resides in City of New York,

nineteen hundred and twenty five
to me known, who, being by me duly sworn,

that he is the President

of 666 West End Avenue Corporation

the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal
affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors
of said corporation; and that he signed his name thereto by like order. Bessie Brandel Comm of Deeds, N Y City

N Y Co. No. 81, Reg. No. 27037, Kings Co. 22, Reg. No. 7020, Comm exp. Feb. 17, 1927

(Certificate filed Registers Office, New York County EF)

(Recording tax of \$ 206.00 Rec'd June 23, 1925 Serial No. T 13800 Annie M thews, Register
New York County)

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Indorsed to be indexed against Block Number 1240
Recorded preceding at the request of N Y Title & Mortgage Co. 135 B'way, N Y C. on the Land Map of the County of New York
at 35 Mins P.M. June 23, 1925 at 3 O'clock

EXAMINED

S.

REGISTER.

RW

erected. Said premises being also known as and by street Nos. 114-46 Nelson Avenue. Together with appurtenances and all estate and rights of party of first part in and to said premises. To have and to hold the premises herein granted unto party of second part its successors and assigns forever. Subject to any state of facts that an accurate survey would show. Subject to present leases, lettings and tenancies. Subject to first mortgage lien in the sum of \$120,000 and accrued interest thereon. Subject also to second mortgage lien originally in the sum of \$30,000 and which has been reduced by payments to the sum of \$18,000 and accrued interest thereon. And party of first part covenants as follows. First. That party of first part is seized of said premises in fee simple and has good right to convey same. Second. That party of second part shall quietly enjoy said premises. Third. That said premises are free from incumbrances, except as aforesaid. Fourth. That party of first part will execute or procure any further necessary assurance of title to said premises.

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Def't Ex. A

2. In purchase, lease, sell, exchange, or other-
wise disposal of real property, improved or unim-
proved, or any interest therein; to erect,
or have erected buildings or works of every de-
scription on the property, or upon any other
property owned, leased, or otherwise existing
in connection with the property, or to purchase or other-
wise acquire any buildings and other property
owned, leased, or otherwise existing on the property of the corporation
or on any other property owned, leased, or otherwise existing on the
property of the corporation, or to purchase or otherwise acquire any
property owned, leased, or otherwise existing on the property of the im-
provement and to further

d. To manufacture, purchase or otherwise acquire, to hold, pledge, sell and deal in products, materials, goods, wares, merchandise, and personal property, accepting bills of exchange, of whatsoever kind, nature, variety or description; and to acquire, purchase, lease, construct or operate factories, warehouses and stores and other structures.

e. To buy, or otherwise acquire any invention, improvements, processes, trademarks and copyrights, and any letter patent, licenses, trade names of the United States or other countries, and to use, exercise, develop, sell and grant licenses and all rights in respect to the same or any of them.

f. To buy, lease or otherwise acquire the whole or any part of the business, good-will and assets of any firm or corporation (domestic or foreign), engaged in the same business of the same general character as that for which this corporation is organized.

g. To purchase, receive, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor, its stock or bonds or other obligations, and, as owner of any such stock, to possess and exercise in respect thereof all the rights, powers and privileges of the usual owners or holders thereof and to exercise any and all voting powers thereon.

h. To contact any and all of its business with any one or more of the acts and things herein and thereinafter provided for, in any of the states, territories or possessions of the United States, or in any foreign country, and the said corporation may hold, purchase, receive, convey or dispose of real or personal property (as aforesaid) of every kind, but only so well as in the City of New York; but the corporation shall not do any act or thing forbidden by law to a corporation organized under the Business Corporation Law of the State of New York.

ARTICLE II: The amount of the capital stock shall be one thousand (\$1,000,000) dollars, to consist of shares of the par value of ten dollars each, of which shares one hundred thousand shall be paid up.

ARTICLE III: The office of the corporation shall be in the Borough of Manhattan, City, County and State of New York.

ARTICLE IV: The location of the corporation shall be in the City of New York.

ARTICLE: The number of its directors shall be five (5).

ARTICLE: The names and post office addresses of the directors until the first annual meeting of the stockholders were:

NAME

POST OFFICE ADDRESS

CHARLES L. KENNEDY

Jamaica Avenue & 117th Street,
Richmond Hill, New York City

ALFRED KATZMAN

9217 Broadway, Borough of Manhattan,
New York City

FREDERICK C. GORDON

9217 Broadway, Borough of Manhattan,
New York City

FRANK CONNELLEY

4406 Lexington Avenue, Borough of
Manhattan, New York City

ROBERT A. SMITH

9217 Broadway, Borough of Manhattan,
New York City

ARTICLE: The names and post office addresses of the subscribers of this certificate of incorporation and a statement of the number of shares which each agreed to take in the corporation are as follows:

NAME

POST OFFICE ADDRESS

NO. OF SHARES

ROBERT A. SMITH

9217 Broadway, Manhattan,
New York City

1

ALFRED KATZMAN

9217 Broadway, Manhattan,
New York City

1

C. WILSON SMITH

9217 Broadway, Manhattan,
New York City

1

he resides in Borough of Bronx New York City that he is the secretary of Koolha Realty Co Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order-- Michael V Rosenberg--BX Co. Reg. No-28022 Term exp Nov 16/1928-Gert Filed Not subject to recording N.Y.A. Intended to be indexed against block number 2513 lot pt 56 on the land map of the county of Bronx. Recorded proceeding at request of Harrie Grossman Jul 29/1926 at 12 o'clock and 05 mins. P.M.

Examined--JP

Louis A. Scheffel

Register--JP

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to the said premises-In witness whereof the party of the first part has hereunto set
its hand and seal the day and year first above written--Koslo Realty Co. Inc- by
Samuel Boillin -Pres(Seal Koslo Realty Co. Inc-incorporated 1924-New York) In presence
of Martin W Frank-Secretary of New York County of Bronx-- On the 22nd day of June
nineteen hundred and twenty-six before me came Samuel Boillin to me known who being
duly sworn did depose and say that he resides in the County of Bronx, that he is the
treasurer of the Koslo Realty Co Inc the corporation described in and which executed
the above instrument; that he knew the seal of said corporation; that the seal
affixed to said instrument was such corporate Seal; that it was so affixed by order
of the Board of Directors of said corporation and that he signed his name thereto by
like order- Louis Jay-Comm of Deeds Br Co Ck No-6-Reg Is-27006-Comm exp. Oct 6/1927
Cert Filed. Not subject to recording tax LHM. Indorsed to be indorsed against block
number 5329 on the land map of the county of Bronx. Recorded proceeding at request of
Louis Jay-June 23/1926 at 12 o'clock and 10 mins P.M.

~~Witnessed~~ - J

Louis A Schoffel

Register--JP

19 JAN 46

we have made and subscribed the
 certificate in triplicate this 26th day of January, 1946

James H. ...
James H. ...

On the 26th day of January, 1946, before me
 J. H. ... and S. H. ...
 to be known and known to me to be the individuals described
 in the foregoing instrument, and they
 fully acknowledged to me that they executed the same

James H. ...

LIBR - 19 PAGE 447

STATE OF NEW YORK—OFFICE OF THE SECRETARY OF STATE
CORPORATION BUREAU,

ALBANY, February 2, 1936

Received from BAYLON WATERFRONT, INC.Pay Minimum 1 Dollars,in payment of tax under section 180 of the Tax Law, as follows: $1/20$ of 1 per cent on\$ 5,000.00 consisting of 50 shares par value \$ 100.00 each, \$ 10.00Five cents per share on shares without par value, \$

FLORENCE E. S. KNAPP, Secretary of State.

by [Signature] 3/10/36 10 11
CashierBOOK No. 1702 103 6 FILED and RECORDED at request
of James E. Flax 10 11 10 11
at 5 o'clock 73 minutes PM

RECORDED

JAN 11 1956

FEB - 1956 00267 . . . - L K

CERTIFICATE OF INCORPORATION

-2-

SECTION EIGHT, INC.

Incorporated January 26, 1956

LOUIS H. PERL,
 Attorney & Counselor at Law,
 1111 Broadway,
 Manhattan,
 New York City 100

SUM NO.

PAGE NO.

TOTAL PAGES

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COUNT 3156

BY E. J. Y.

STUD NO.

PAGE

TOTAL PAGES

FEB 8 - 1956

COUNT 6794

BY E. J. Y.

COUNT 6794

BY E. J. Y.

CERTIFICATE OF INCORPORATION

OF

THE WHITE HOUSE, INC.

PURSUANT TO ARTICLE IV of the Stock Corporation Law.

WE, the undersigned, desiring to form a business Corporation pursuant to the provisions of Article II of the Stock Corporation Law of the State of New York, do hereby make, sign, acknowledge, and file this Certificate for that purpose, and do hereby certify:

FIRST: The name of the proposed corporation is:

THE WHITE HOUSE, INC.

SECOND: The purposes for which it is formed are:

1. To conduct and carry on business of dealing in and with acquiring, improving, developing, holding, selling and conveying, managing, leasing and exploiting real property, including leaseholds and all interests in real estate for profit.

2. To conduct and carry on business of contracting and the construction, reconstruction, improvement and development of real property including leaseholds and all interests in real estate and for general construction work.

3. To conduct and carry on business of acting as agent for other persons, firms or corporations, in promoting the business enterprise of them or any part thereof, or in the transaction of any business, including leaseholds.

4. To acquire, develop, construct, design or otherwise acquire or dispose of and to manage or otherwise develop lots, buildings, structures, machinery, fixtures, real and personal property of the company, and to conduct and carry on the business of the company and to acquire and hold all legal or equitable rights and interests therein.

3-157-113

8. To borrow money with or without pledge of, or mortgage on any or all of its real or personal property or securities as far as necessary for its business, loan or advance money upon or on personal or real property or on either of them and to purchase or dispose of mortgages upon real estate.

Said corporation shall have additional powers and everything necessary, suitable or proper for the accomplishment of purposes hereinbefore enumerated or any of them or any portion thereof principal, agents, contractor or otherwise, either alone or with other corporations or natural persons and shall possess and may exercise all rights, powers and privileges of natural persons in connection therewith subject to law and shall also have authority and power to purchase, sell and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stocks, bonds or other obligations, within the limitations of the Business Corporation Law and any extension in respect thereto all powers and privileges of natural persons or bodies thereof, and may execute any contracts relating to stocks, bonds or other obligations of any corporation in furtherance of its business, and the same may be performed by corporations organized under the said Business Corporation Law. Said corporation shall also have the power to conduct its business or to exercise any part thereof in any place, territory, colony or other part of the United States and in the District of Columbia, or in any foreign country or place, as the board of directors may deem that the same may be properly and advantageously conducted by corporations organized under the Business Corporation Law of the State of New York.

Article 10. Name of the Corporation shall be the Eastern Corporation.

Article 11. The capital stock of the Corporation shall be divided into shares of the par value of \$100.00 each.

Article 12. The Corporation shall have the right to purchase, sell and dispose of its stocks, bonds or other obligations, within the limitations of the Business Corporation Law and any extension in respect thereto all powers and privileges of natural persons or bodies thereof, and may execute any contracts relating to stocks, bonds or other obligations of any corporation in furtherance of its business, and the same may be performed by corporations organized under the Business Corporation Law of the State of New York.

Article. The Borough of Queens, City of New York, County

of New York is the City and County in which its principal

office is located.

Section. Its duration shall be perpetual.

Section. The number of its directors shall be seven

and it is hereby declared that the Directors are not required to be

Section. The name and post office addresses of the
 Directors shall be the first annual meeting of the stock-

Section. The name and post office addresses of the
 Directors shall be the first annual meeting of the stock-

THE DIRECTORS

1100 Ave. 2 189th St., St. Albans
 100 Madison Avenue, Jamaica, N.Y.
 1000 109th St., St. Albans, N.Y.
 1000 109th St., St. Albans, N.Y.
 1000 109th St., St. Albans, N.Y.

Section. The name and post office addresses of the
 Directors shall be the first annual meeting of the stock-

THE DIRECTORS

THE DIRECTORS

1100 Ave. 2 189th St., St. Albans (11)
 100 Madison Ave., Jamaica (12)
 1000 109th St., St. Albans (13)
 1000 109th St., St. Albans (14)
 1000 109th St., St. Albans (15)
 1000 109th St., St. Albans (16)

Section. The name and post office addresses of the
 Directors shall be the first annual meeting of the stock-

Section. The name and post office addresses of the
 Directors shall be the first annual meeting of the stock-

prevent his contracting with the corporation for the benefit of himself or any firm, association or corporation in which he may be in any way interested

(b) All corporate powers, including the sale, mortgage and pledge of the whole or any part of the corporate property shall be exercised by the Board of Directors, except as otherwise expressly provided by law.

(c) The corporation may use and apply its surplus earnings and accumulated profits, otherwise by law to be reserved, to the purchase or acquisition of property and to the purchase or acquisition of its own capital stock from time to time and to such extent and in such manner as may be determined by its Board of Directors shall determine whether the property nor the capital stock so purchased or acquired or any of its own capital stock taken in payment or satisfaction of any debt due to the corporation shall be regarded as profits for the purpose of declaration or payment of dividends unless otherwise determined by a majority of the Board of Directors.

IN WITNESS WHEREOF, we have hereunto set our hands and acknowledged this Certificate of Incorporation in duplicate this 1st day of July, 1928.

Frank C. Cramer

Edwin H. Cramer

Frank C. Cramer

Edwin H. Cramer

Frank C. Cramer

Frank C. Cramer

Edwin H. Cramer

Frank C. Cramer

Edwin H. Cramer

Frank C. Cramer

Edwin H. Cramer

Frank C. Cramer

Edwin H. Cramer

Frank C. Cramer



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2857.113.

[fol. 245]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 58—October Term, 1959.

Argued November 17, 1959

Docket No. 25690

UNITED STATES OF AMERICA, Appellee,

—v.—

FRANK COSTELLO, Appellant.

Before: Magruder, Moore and Friendly, Circuit Judges.

Appeal from a decree of the United States District Court for the Southern District of New York, Archie Owen Dawson, *Judge*, revoking citizenship, pursuant to Section 340(a) of the Immigration and Nationality Act of 1952, 8 U. S. C. §1451(a), as amended, 68 Stat. 1232, on the ground that citizenship certificate was obtained by willful misrepresentations. 171 F. Supp. 10. *Affirmed*.

[fol. 246] Edward Bennett Williams, Washington, D. C. (Agnes A. Neill and Vincent J. Fuller, Washington, D. C., Morris Shilensky, New York, N. Y., and Hays, St. John, Abramson & Heilbron, New York, N. Y., on the brief), for appellant.

Morton S. Robson, Asst. U. S. Atty., Southern District of New York, New York, N. Y. (S. Hazard Gillespie, Jr., U. S. Atty., S. D. N. Y., New York, N. Y., on the brief), for appellee.

OPINION—February 17, 1960

Magruder, Circuit Judge:

This is another of those troublesome denaturalization cases, instituted by the government in an effort to have

the court cancel a certificate of naturalization issued over thirty years ago. The proceeding is brought pursuant to §340(a) of the Immigration and Nationality Act of 1952, as amended, 68 Stat. 1232. This statute contains no provision for limitations, nor is there any other federal statute applicable to the case. And, as Hughes, C.J., said in *United States v. Summerlin*, 310 U. S. 414, 416 (1940): "It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights."

It is impossible to say that the statutory provisions for the issuance by the court of naturalization certificates, under certain prescribed conditions, do not constitute a proper judicial function. *Tutup v. United States*, 270 U. S. 568 (1926). And despite what may seem to be the harshness of the result, it seems impossible to say that the Congress cannot constitutionally provide a proceeding for the cancellation of a certificate obtained by fraud or concealment. *Knauer v. United States*, 328 U. S. 654, 673 (1946). It was so provided way back in the Act of 1906 which, in §15 thereof, vested jurisdiction in the district courts of suits by the United States Attorney on behalf of the United States "for the purpose of setting aside and canceling a certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." 34 Stat. 601. See *Johannessen v. United States*, 225 U. S. 227 (1912). Such provision for denaturalization was carried forward by Congress into §338(a) of the Nationality Act of 1940 (54 Stat. 1158-59). In the Immigration and Nationality Act passed in 1952, denaturalization proceedings were also provided for, but the Congress struck out the earlier provision for cancellation of a certificate that had been illegally issued, and confined cancellation to cases where the certificate had been procured "by concealment of a material fact or by willful misrepresentation." 66 Stat. 260. This provision was reenacted by the Congress in 1954. 68 Stat. 1232.

The Supreme Court has never told us that a denaturalization proceeding partakes of the character of a criminal proceeding. Indeed, in the *Johannessen* case, *supra*, the Court upheld the constitutional validity of a provision in

§15 of the Act of 1906 to the effect that the denaturalization provisions should apply not only prospectively but also "to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws." 34 Stat. 601. In this connection the Court said (225 U. S. at 242): "It is, however, settled that this prohibition is confined to laws respecting criminal punishments, and has no relation to retrospective legislation of any other description. . . . The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges."

[fol. 248] Although the Supreme Court has many times upheld a decree for the cancellation of a certificate of naturalization, it has prescribed an exacting quantum of proof as requisite to establishing a case by the government against a certificate holder. The case for cancellation must be "clear, unequivocal, and convincing," and should not leave "the issue in doubt." See *Schneiderman v. United States*, 320 U. S. 118, 158 (1943); *Baumgartner v. United States*, 322 U. S. 665 (1944); *Knauer v. United States*, *supra*, 328 U. S. 654 (1946).

If a denaturalization case is a sort of civil proceeding, we are at a loss to see why our scope of review is not limited by the "clearly erroneous" test of the unqualified Rule 52(a) of the Federal Rules of Civil Procedure. If that is so, then once we are convinced that the district court was aware of and applied the proper strict standards of proof—which clearly appears in the case at bar—we ought not to upset its finding that the defendant had obtained his certificate of citizenship by fraud unless we are satisfied that such finding was "clearly erroneous." See *Corrado v. United States*, 227 F. 2d 780, 783 (C. A. 6th, 1955). Of course, fraud is an internal state of mind, and it is possible that a man may give an incorrect answer to a question in a bona fide but mistaken belief as to what the question calls for. But if an applicant for citizenship has in fact no such misapprehension as to what answer the question calls for, and consciously falsifies an answer on a material point, he is certainly guilty of fraud in the baldest sense of the

term. The district court believed that Costello was guilty of this kind of fraud, and we certainly cannot say that the finding to this effect was "clearly erroneous."

On the other hand, perhaps we are wrong about our limited scope of review; and it may be that in this very special type of civil proceeding we have a broader power of review, and are under the obligation ourselves to scrutinize [fol. 249] the evidence, to satisfy ourselves that the proof offered by the government was "clear, unequivocal, and convincing." See *Baumgartner v. United States*, *supra*, 322 U. S. 665, 670-72 (1944); *Brenci v. United States*, 175 F. 2d 90 (C. A. 1st, 1949); *Cufari v. United States*, 217 F. 2d 404 (C. A. 1st, 1954).

Fortunately, we do not in this case have to determine what our scope of review may be in these cases, since we are here more than satisfied that the findings by the district court which will sustain a cancellation of the certificate of naturalization are the only findings possible on the evidence, and that they fulfill the strictest requirements of proof. 171 F. Supp. 10.

We think the district court, though it did not do so, might properly have buttressed its findings by the unfavorable inferences to be drawn from the fact that Costello chose to remain off the witness stand and to introduce no evidence in answer to the government's case indicating fraud. The matters inquired into were within Costello's peculiar knowledge. Since Costello was not a criminal defendant in the present proceedings, he had no privilege to remain silent. *United States v. Matles*, 247 F. 2d 378 (C. A. 2d, 1957), *rev'd* on other grounds 356 U. S. 256 (1958). See also *Vajtauer v. Commissioner*, 273 U. S. 103 (1927).

The government's complaint in the present case was filed May 1, 1958. In compliance with the procedural requirement of §340(a), as amended, the complaint was accompanied by affidavits showing "good cause" for the institution of the proceeding. 68 Stat. 1232. The request for cancellation of the certificate of naturalization was based upon various allegations of fraud and concealment. We mean to be guided by the words of the Supreme Court in the *Schneiderman* case, *supra*, 320 U. S. at 16. "A denaturalization suit is not a criminal proceeding. But neither

is it an ordinary civil action since it involves an important [fol. 250] adjudication of status. Consequently we think the Government should be limited, as in a criminal proceeding, to the matters charged in its complaint."

Some of the allegations of fact contained in the complaint were not accepted by the district court as sufficiently established pursuant to the strict requirements of proof imposed upon the government. Though the government now urges us to examine the state of the evidence in these regards, we do not propose to go beyond the findings of fact by the district court. That court based its decree upon findings with reference to two of the issues raised by the complaint: (1) That in the preliminary form for petition for naturalization, and in testimony under oath before a naturalization examiner, and also in his petition for naturalization, Costello knowingly and willfully stated that his occupation was "real estate," whereas in truth his occupation was the illicit purchase and sale of alcoholic beverages; (2) that the defendant swore in his oath of allegiance, on September 10, 1925, that "I will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same." This was said to be a known falsehood because the defendant was actually engaged at the time in a course of activity which flouted the Constitution and was designed to violate the laws of the United States.

It was established by the United States, from Costello's own mouth, that he was at the crucial dates engaged in bootlegging activities. He gave a statement to Special Agent Sullivan on July 24, 1938, to the effect that he was involved in the liquor business from 1923 or 1924 until a year or two before repeal of the Eighteenth Amendment. In answer to questions by the district attorney in a proceeding before a New York County grand jury in 1943, Costello admitted that he got large sums of money from importing whisky during prohibition days. He admitted [fol. 251] that he had reported to the state taxing authorities that for the years 1919 to 1932 his income had totaled \$305,000, most of it made in the bootlegging business. If corroboration of these statements is required in the present case, such corroboration is amply found in the testimony of

the witnesses Kessler, Kelly and Coffey. The evidence is clear beyond any doubt that during prohibition days Costello's major activity, both in terms of time spent and revenue obtained, was bootlegging.

In his preliminary form for petition for naturalization, in answer to a question requiring him to put down his "present occupation," he answered "real estate." He gave a similar answer in his petition for naturalization.

Of course one has to begin a new occupation at some point of time, and at the outset there necessarily is not a great deal of evidence as to such activity. The evidence relating to Costello's real estate dealings is at best scanty. The government made a check of the real estate records in four counties of Greater New York, which check revealed that Koslo Realty Co., Inc., was organized on December 1, 1924; that some time prior to May 1, 1925, Costello was associated with this corporation. Koslo Realty Co. purchased a piece of property and sold the same on June 22, 1925. Costello later became president of the corporation. How much activity Costello had to expend in this capacity does not appear, nor does it appear whether or not Koslo Realty Co. was engaged in other real estate transactions in other parts of the country not covered by the government's spot check. If there was any further evidence along this line, it would be peculiarly within the knowledge of Costello, and his failure to produce evidence of such activity warrants the inference that there was none such.

We think it obvious that a worldly-wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but [fol. 252] "dust in the eyes" to conceal his real occupation. As the district judge stated: "If a man in that situation had been honest when asked what his occupation was, would he have answered 'real estate'? If he had told the truth he probably would not have been naturalized, but this is no excuse for his using fraud and deceit to secure his naturalization." The term "occupation," the court said, "would commonly be understood to refer to income producing activity to which a person devotes the major portion of his time and from which he derives the greater portion of his income." 171 F. Supp. at 18. Surely it is conceivable that an applicant

might believe that the answer called for no more than a disclosure of some "legal occupation." There is no evidence in the record that Costello so believed. If he had given a truthful answer, it is probable that the court would not readily have accepted his assertion of being possessed of "good moral character," and he might not have received his certificate of naturalization. As the district court said: "When he answered that his occupation was real estate he was giving a false and misleading answer and was therefore engaged in a willful misrepresentation in order to secure his naturalization certificate." 171 F. Supp. at 18.

The district court also based its holding upon a finding that Costello falsely swore that he would "support and defend the Constitution" and "bear true faith and allegiance to the same."

Costello also swore that he was "attached to the principles of the Constitution." Just what this phrase might mean as used in the Nationality Act poses a question of some difficulty. See *Stasiukevich v. Nicolls*, 168 F. 2d 474, 477 (C. A. 1st, 1948). We don't believe that the phrase would require a person to believe in the soundness of the Eighteenth Amendment; but at least it would seem to require that the applicant should support an existing provision of the Constitution unless and until it is repealed [fol. 253] in an orderly way as provided in Art. V of the Constitution. Therefore, if Costello was at the time engaged in violation of the Eighteenth Amendment and of the Volstead Law, it seems hard to say that he was "attached to the principles of the Constitution."

But the answer to all the foregoing is that the complaint in the present case does not charge that Costello swore falsely in affirming that he was "attached to the principles of the Constitution."

We are not satisfied that the district court was correct in ruling that the oath to "support and defend the Constitution and laws of the United States" means the same as "attached to the principles of the Constitution." It may be urged that the oath which Costello was charged with having violated was merely a political oath calling for a repudiation of allegiance to King Victor Emmanuel III and a statement of allegiance to the United States.

We do not have to pass finally on this alleged fraud in the oath, since the first allegation, with reference to the statement of Costello's occupation, is amply supported so as to sustain the charge of fraud and to require us to uphold the decree of denaturalization.

There is only one further point made by appellant that deserves some extended comment. It has to do with the validity of the affirmative defense, specifically pleaded here, that "the complaint is barred under principles of *res judicata*." We think there is nothing to the point; in fact, we cannot see how any court could accept the argument advanced by appellant except upon an invincible determination to frustrate finally what the court might regard as an undesirable effort by the government to accomplish the cancellation of an old certificate of naturalization.

This is not the first effort by the government to obtain the cancellation of Costello's certificate. On October 22, 1952, the district attorney filed a denaturalization complaint [fol. 254] against Costello under §338 of the Nationality Act of 1940 (54 Stat. 1158). The allegations of fraud were about the same as in the present complaint. But as then permitted by law, cancellation of the certificate of naturalization was also sought on the ground that the certificate was "illegally procured"; that is to say, that the conditions precedent to naturalization, a "good moral character" and an attachment "to the principles of the Constitution," did not in fact exist. As we have previously stated, the latter ground of cancellation was omitted from the present Act.

Though the United States Attorney filed an affidavit of "good cause" prior to the trial of that earlier action, he failed to submit this affidavit simultaneously with the filing of the complaint. The district court entered an order dismissing the complaint "without prejudice." 145 F. Supp. 892 (S. D. N. Y. 1956). The court of appeals reversed, in an opinion having to do solely with so-called "wire tap" evidence. *United States v. Costello*, 247 F. 2d 384 (C. A. 2d, 1957). Upon certiorari the Supreme Court, in a one-paragraph *per curiam* opinion, reversed the judgment of the court of appeals upon a ground not theretofore considered by that court, namely, that an affidavit showing good cause is a prerequisite to the initiation of denaturalization proceedings and must be filed along with the com-

plaint when the proceedings are instituted, citing only *United States v. Zucca*, 351 U. S. 91 (1956). Accordingly the Supreme Court remanded the case to the district court with directions to dismiss the complaint. 356 U. S. 256 (1958).

When the case got back to the district court, since nothing was said in the Supreme Court mandate about whether the dismissal should be with or without prejudice, the district judge considered that he was bound by the terms of the mandate merely to dismiss the complaint.

[fol. 255] There may have been an error by the district court in its refusal to add the words, proposed by the government, that the dismissal of the complaint should be "without prejudice." However, this error, if it was an error, could have been corrected on appeal, and no appeal was taken from the district court's order of dismissal.

In Rule 41(b) of the Federal Rules of Civil Procedure, it is provided as follows: "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits."

Rule 41(b) does not state what the effect of a prior judgment on the merits is, but if the dismissal of the earlier complaint was really a judgment on the merits we suppose that that would preclude the government as well as a private litigant from filing another complaint based upon the same cause of action, under principles of *res judicata*.

The district court was persuaded by the government's argument that Rule 41(b) had no application because the dismissal was "for lack of jurisdiction" within the meaning of the rule.

No doubt the word "jurisdiction" is a somewhat slippery one, susceptible of various meanings. In holding, as we do, that Rule 41(b) has no application, we prefer not to say that the district court lacked "jurisdiction" to determine the denaturalization complaint despite the lack of a "procedural prerequisite," namely, the filing of an affidavit showing "good cause" simultaneously with the filing of the complaint. Because the phrase "lack of jurisdiction" is

used in immediate conjunction with the phrase "for improper venue," it would be plausible to argue that the word "jurisdiction" is used in the rule in its usual re-[fol. 256] stricted sense. See *Title v. United States*, 263 F. 2d 28 (C. A. 9th, 1959).

In striking out the words "without prejudice," as proposed by the government, the district court exercised no discretion, as contemplated in the rule, but merely conceived that it was bound by the mandate of the Supreme Court to dismiss the complaint without saying anything about whether it should be with or without prejudice.

The district court did not determine that its dismissal should be regarded as a judgment on the merits. It made no findings as provided in the sentence of Rule 41(b) saying that, "If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a)." And it is obvious that the Supreme Court, in directing such dismissal, did not suppose that it was directing a determination on the merits, which would preclude the government from starting over again, with this particular statutory "procedural prerequisite" duly observed. In the only case cited by the Supreme Court in its brief *per curiam* opinion, *United States v. Zucca*, *supra*, 351 U. S. 91 (1956), the district court had dismissed a complaint for denaturalization, without prejudice to the government's right to institute an action to denaturalize the respondent upon filing an affidavit of good cause. 125 F. Supp. 551 (S. D. N. Y. 1954). The court of appeals affirmed the dismissal (221 F. 2d 805 (C. A. 2d, 1955)) and upon certiorari the Supreme Court in its turn affirmed the judgment of the court of appeals. 351 U. S. 91 (1956). The Supreme Court thought that the district court had correctly dismissed the proceedings because of the failure of the government to file the required affidavit at the time the complaint was filed. But note, that such dismissal had been without prejudice.

[fol. 257] It seems to us that Rule 41(b) should be interpreted as applying only to cases in which the trial judge is exercising some discretion and is not merely acting mechanically pursuant to the direction of a superior court. There must be a rule that a bare "dismissal" is to be inter-

preted as either with or without prejudice, and 41(b) provides this rule in all cases where the district court has a real discretion in the matter. But there is obviously no such need where the trial court's disposition of the case has been predetermined by a superior court. It would be a violation of the intention of all the courts concerned if the dismissal of the earlier complaint were held in this case to be a judgment on the merits. Appellant's arguments exalt pure technicalities to a wholly unwarranted degree. And see *Restatement, Judgments* §49 (1942).

A judgment will be entered affirming the judgment of the district court.

[fol. 259]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present:

Hon. Calvert Magruder, Hon. Leonard P. Moore, Hon.
Henry J. Friendly, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

—v.—

FRANK COSTELLO, Defendant-Appellant.

JUDGMENT—February 17, 1960

Appeal from the United States District Court for the
Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fol. 260] [File endorsement omitted]

[fol. 261] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 262]

SUPREME COURT OF THE UNITED STATES

No. 802—October Term, 1959

FRANK COSIELLO, Petitioner,

—v.—

UNITED STATES.

ORDER ALLOWING CERTIORARI—May 16, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. Two hours are allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.